CLERK'S COPY.

Vol. I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1939

No. 638

APEX HOSIERY COMPANY, PETITIONER,

vs.

WILLIAM LEADER AND AMERICAN FEDERATION OF FULL FASHIONED HOSIERY WORKERS, PHILADELPHIA, BRANCH No. 1, LOCAL No. 706

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED JANUARY 12, 1940.

CERTIORARI GRANTED FEBRUARY 26, 1940.

INDEX

Volume I

	PAGE
Docket Entries	2
Plaintiff's Second Amended Complaint (Filed Sept. 19, 1938)	8
Affidavit of Defense of William Leader (Filed Oct. 27, 1938)	23
Affidavit of Defense of American Federation of Full Fashioned Hosiery Workers, Philadelphia Branch, No. 1, Local No. 706 (Filed Oct. 27, 1938)	36
Testimony (Filed April 18, 1939)	51

PLAINTIFF'S EVIDENCE

(Hearing Held March 13, 1939)

	DI.	CR.	RE-D.	RE-C.
Ulysses G. Brown Called on Cross Examination				68
Jack L. Milestone	78	82	84	86
Fritz Wienhold	88	91		
Joseph Friedland	93	95	97	
William Meyer	100	160	176	

(Hearing Held March 14, 1939)

	DI.	CR.	RE-D.	RE-C.
Kathryn Bradley	177			
Mildred Elsner	189	196		
Paul Bergmeister	197	200	201	
William Goble	202	203		
Marguerite Rupp	211	217		
Helen Dorwart	220	230		
Earl Stout	239			
F. Elwood Struve	247	277		
John Hartung	295	299		
Joseph Smith	303	308		
Herbert Hahn	311			
Frederick W. Koelle	318			
Leo O'Driscoll Called on Cross Examination			327,	355
Harry Oehmig Sworn				355
Harry Oehmig Called on Cross Examination				357

(Hearing Held March 15, 1939)

Harry Oehmig Called on Cross Examination				365
Joseph Patrick Burge Called on Cross Examination				402
J. Allen Harper	405	462		
Milton S. Steeple	472			

Volume II

(Hearing Held March 15, 1939 Cont.)

J. Allen Harper			496	
Milton S. Steeple	499	547		

(Hearing Held March 16, 1939)

	DI.	CR.	RE-D.	RE-C.
Milton S. Steeple			585	587
William Leader Called on Cross Examination				607
Sylvan Hirsch	618	622		

DEFENDANTS' EVIDENCE

William Leader	629	666		

(Hearing Held March 17, 1939)

William Leader		694		
Myles Higgins	738	746	753	754
William F. Etter	755	783	811	818
Edwin Morris	820	823	824	
Frederick S. Weber	824	825	826	828
			829	830
Richard Doyle	830			

(Hearing Held March 20, 1939)

William Meyer Called on Cross Examination	842

PLAINTIFF'S EVIDENCE IN REBUTTAL

Ulysses G. Brown Called on Cross Examination				849
Mildred Kelly	876	884		
J. Allen Harper	886			
William Meyer	889	891	892	

DEFENDANTS' EVIDENCE SURREBUTTAL

	DI.	CR.	RE-D.	RE-C.
Elsie Rau	894	904		

(Hearing Held March 21, 1939)

(Hearing Held March 29, 1939)

PLAINTIFF'S EVIDENCE (Continued)

Earl Constantine	924			
Joseph C. Langer	928	930		
	940	969		
	970	978		

Volume III

(Hearing Held March 29, 1939 Cont.)

Joseph C. Langer		1018		

(Hearing Held March 30, 1939)

Joseph C. Langer	1129	1114		
	1133	1131		
	1138	1135		
	1149	1144		
		1163		
Milton S. Steeple			1151	1152
William Meyer	1181		1145	1147

PLAINTIFF'S EVIDENCE IN REBUTTAL (Continued)

William Meyer	1203	1209	1242	1245
Milton S. Steeple			1270	1274
Joseph C. Langer			1270	

	DI.	CR.	RE-D.	RE-C.
F. Elwood Struve			1265	
(Hearing Held March 31, 1939)				
PLAINTIFF'S EVIDENCE (Continued)				
Milton S. Steeple			1282	1285
			1296	1298
			1300	
Motion for Directed Verdict for Defendants				1305
(Hearing Held April 3, 1939)				
Charge of the Court				1312
Motion for Directed Verdict for Defendants				1348
Defendants' Points for Charge				1350
Plaintiff's Calculation of Losses for which Claim Is Made in this Suit				1358
Verdict				1367
Judgment				1368
Motion To Set Aside Verdict and Judgment Against William Leader and American Federation of Hosiery Workers, Branch No. 1, Local 706				1369
Motion and Reasons for New Trial				1370
Opinion Sur Motion To Set Aside the Verdict and Judgment and Motion for New Trial				1389
Order Dismissing Motions To Set Aside the Verdict and Judgment and To Grant a New Trial				1392
Notice of Appeal				1393
Designation of Matter To Be Included in Record on Appeal				1395
Certificate of Clerk				1397

Exhibits

PAGE

Exhibit P-1, Copy of letter dated March 4, 1937, from William Leader, President, Full Fashioned Hosiery Workers Local 706, Branch No. 1, to the Brooks and Anderson Hosiery Company 120

Exhibit P-2, Photograph (Physical Exhibit) 131

Exhibit P-3, Photograph (Physical Exhibit) 132

Exhibit P-4, Photograph (Physical Exhibit) 132

Exhibit P-5, Photograph (Physical Exhibit) 132

Exhibit P-6, Photograph (Physical Exhibit) 134

Exhibit P-7, Photograph (Physical Exhibit) 136

Exhibit P-8, Photograph (Physical Exhibit) 215

Exhibit P-9, Card entitled "Pledge Card, American Federation of Hosiery Workers, Branch No. 1" 229

Exhibit P-10-a to P-10-u, Photostatic copies of vouchers of the Full Fashioned Hosiery Workers Union of Philadelphia and Vicinity 339-354

Exhibit P-11-a to P-11-q, Copies of The Hosiery Worker 373-400

Exhibit P-12, Summary of damage to leggers and footers on June 19th, 1937, compiled by Mr. Harper 422

Exhibit P-13, Handwritten memoranda of Mr. Harper relating to damages found on various dates during the sit-down strike 442

Exhibit P-14, Photostatic copies of memoranda made by Mr. Harper relating to damages noted to machines on June 23rd, 1937 445

PAGE

Exhibit P-15, Box containing blackjacks, brass knuckles, pipes, etc. (Physical Exhibit) 459

Exhibit P-18, Depositions of Thomas Flynn, Harry Bach, Paul Walton, John Bernhardt, Herbert S. Fahy, Raymond Hallstein, Louis Kenworthy, Peter Kremer, David E. Justice, Herman Freiheit, Edward Kozubel, Carl Kuebler, Paul Lang, Harry Edward Jones, Sesto Lucarini, William Anderson, Martin Pirozek, Howard Carpenter, Francis McDermott, Ernest Del Prete, Alfred Schuch, Louis Drigert, Jake Schulberger, Raymond Evans, Elmer Miller, John Ezzo, William Pawlick, George Flynn, Robert Pawlowski, George Hober, Valentine Razler, Milton Innitski, Walter Razler, Joseph Ryan and William Etter (Physical Exhibit) 606

Exhibit P-19, Circular entitled "Attention—Hosiery Workers", signed by William M. Leader, president 693, 856

Exhibit P-20, Photostatic copy of bill dated May 7th, 1937, from Weil's Curiosity Shop to Full Fashioned Hosiery Workers Union, Philadelphia, Pa. 694, 872

Exhibit P-22, Excerpt from minutes of the regular membership meeting of Branch 1 of September 11, 1937 (Physical Exhibit) 704, 1308

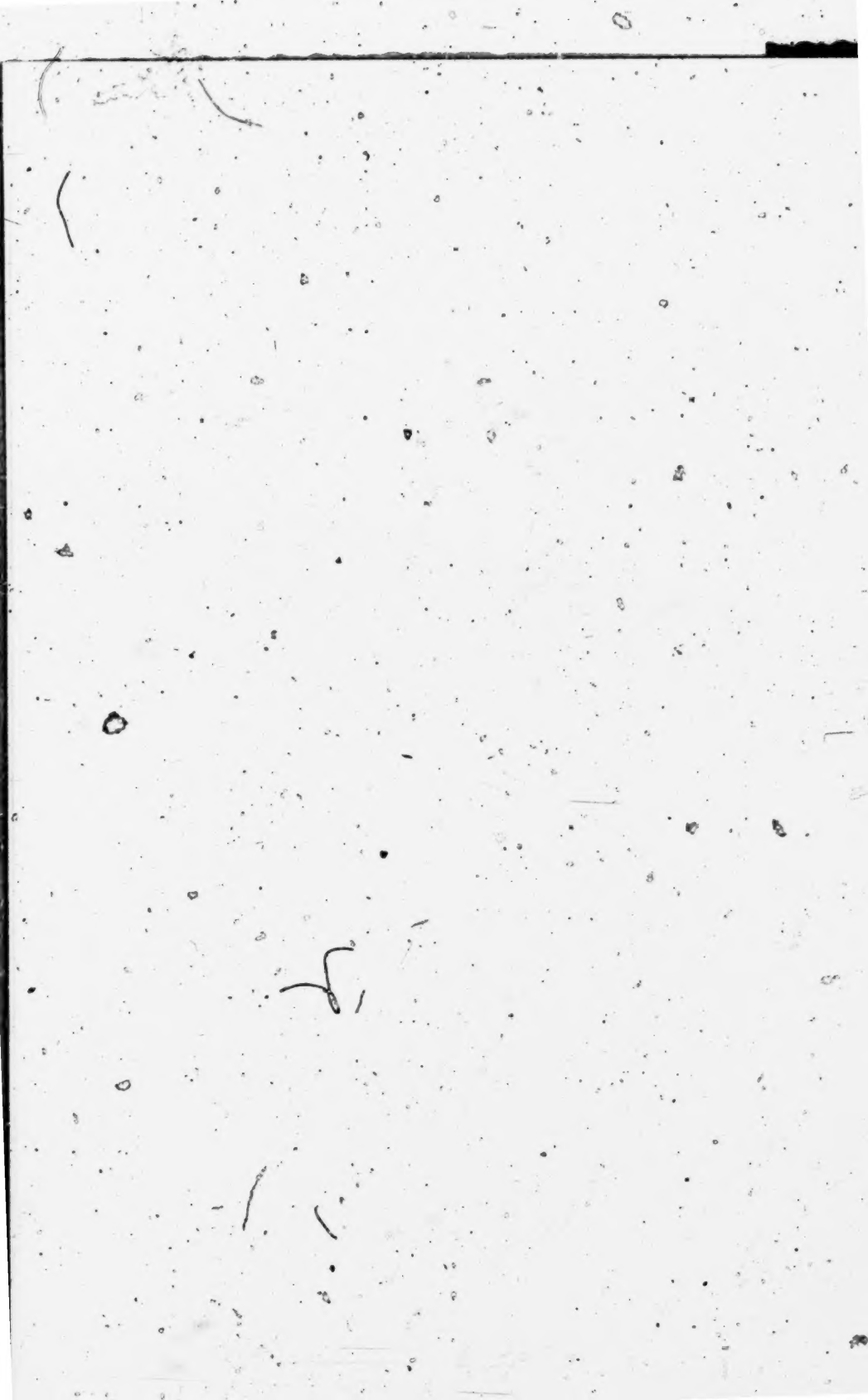
Exhibit P-23, Letter dated May 21, 1937, on the letterhead of the Full Fashioned Hosiery Workers Union of Philadelphia and vicinity 715

Exhibit P-24, Letter dated June 24, 1937, on the letterhead of the Full Fashioned Ho-

PAGE

siery Workers Union of Philadelphia and Vicinity 716, 881
Exhibit P-25, Postal card dated May 21, 1937, from William Leader, addressed to William Meyer, Jr. 820, 883
Exhibit P-26, Letter dated July 29, 1937, from American Federation of Hosiery Workers, Branch No. 1, Local No. 706, to Apex Hosiery Company 875
Exhibit P-27, Report of the Master dated March 28, 1938 921
Exhibit P-28, Statement entitled "Shipments of Women's Full-Fashioned Hosiery 1934-1938 inclusive" prepared by Statistical Department, National Association of Hosiery Manufacturers, Inc. 1261
Exhibit P-29, List of Orders Received August 1, to December 31, 1937 1281
Exhibit D-1, Shop Rules of the Apex Hosiery Co. 279
Exhibit D-9, Letter dated June 28, 1937, from William Leader, President, "Attention All Shop Chairman" 896, 899
Exhibit D-10, Chart on page 18 of brief on behalf of the Full Fashioned Hosiery Manufacturers of America Inc., in a proceeding before a Wage Rate Tribunal in the matter of Full-Fashioned Hosiery Manufacturers of America, Inc., and American Federation of Full-Fashioned Hosiery Workers 1221, 1247
Exhibit D-11, Excerpt from the December 29, 1937, issue of the Special News Letter of the National Association of Hosiery Manufacturers 1264

	Original	Print
Proceedings in U. S. C. C. A., Third Circuit	1398	1398
Order of submission	1398	1398
Opinion, Biggs, J.	1399	1398
Judgment	1400	1414
Petition for rehearing (omitted in printing)	1401	1415
Order denying petition for rehearing	1402	1415
Clerk's certificates (omitted in printing)	1403	
Order allowing certiorari	1404	1416



In The

DISTRICT COURT OF THE UNITED STATES

For the Eastern District of Pennsylvania

No. 19950. March Term, 1937.

APEX HOSIERY COMPANY

vs.

WILLIAM LEADER, President of American Federation of Full Fashioned Hosiery Workers (Sometimes known as American Federation of Hosiery Workers), Phila. Branch No. 1, Local No. 706, an unincorporated association, and individually, Joseph Burge, Vice President of said association, and indivdually, Harry Omeig, Treasurer of said association, and individually, Huey Brown, Secretary of said association, and individually, The American Federation of Full Fashioned Hosiery Workers, (sometimes known as American Federation of Hosiery Workers), Philadelphia Branch No. 1, Local No. 706, an unincorporated association, on behalf of itself and all the members thereof.

Sylvan H. Hirsch, Esq.,
Arno P. Mowitz, Esq.,
Harry G. Sundheim, Esq.,
For Plaintiff.

M. Herbert Syme, Esq.,
For Defendants.

DOCKET ENTRIES

May 28, 1937, Praecipe to issue Summons, filed.

May 28, 1937, Summons exit—returnable first Monday in June, 1937.

May 28, 1937, Statement of Claim, filed.

June 15, 1937, Affidavit of Defense raising questions of law filed.

Aug. 2, 1937, Summons returned: "on June 4 and 5, served and filed."

Aug. 2, 1937, Stipulation of counsel withdrawing affidavit of defense raising questions of law and granting leave to file amended statement of claim, filed.

Mar. 3, 1938, Amended Statement of Claim and notice to file affidavit of defense, filed.

Apr. 26, 1938, Motion to dismiss in lieu of answer, filed.

May 5, 1938, Praecipe to place case on Argument List, filed.

June 13, 1938, Praecipe to place case on Argument List, filed.

July 6, 1938, Argued sur motion to dismiss action.

Sept. 14, 1938, Opinion, Kirkpatrick, J., granting leave to amend statement of claim and denying motion to dismiss action, filed.

Sept. 19, 1938, Second amended Statement of Claim and notice to file answer, filed.

Oct. 27, 1938, Affidavit of Defense of Wm. Leader, filed.

Oct. 27, 1938, Affidavit of Defense of Amer. Federation of Full Fashioned Hosiery Workers, filed.

Oct. 27, 1938, Affidavit of Defense of Harry Omeig, filed.

Oct. 27, 1938, Affidavit of Defense of Jos. Burge, filed.

Oct. 27, 1938, Affidavit of Defense of Huey Brown, filed.

Nov. 23, 1938, Proof of notice by plaintiff of taking depositions, filed.

Nov. 29, 1938, Proof of notice by plaintiff of taking depositions, filed.

Dec. 1, 1938, Petition of defendants to compel plaintiff to show cause why depositions should not be taken, filed.

Dec. 1, 1938, Hearing sur petition to compel plaintiff to show cause, etc.

Eo die, Petition denied.

Dec. 7, 1938, Affidavit as to failure of M. Pirozels, a witness to appear, filed.

Dec. 7, 1938, Motion for attachment for M. Pirozels, a witness.

Dec. 7, 1938, Attachment exit.

Dec. 8, 1938, The Marshal produces M. Pirozels, witness, in open Court. Ordered that witness be taken before Notary Public for deposition.

Dec. 8, 1938, Attachment sur witness returned: "C. C." and filed.

Dec. 15, 1938, Motion by plaintiff for discovery and production of documents, etc., filed.

Dec. 15, 1938, Notice of motion, filed.

Dec. 19, 1938, Hearing sur motion for discovery. C. A. V.

Dec. 23, 1938, Answer of defendants to motion for discovery, filed.

Dec. 27, 1938, Order of Court appointing Special Master to supervise inspection of records, etc., filed. 12/27/38 Noted and notice mailed.

Dec. 29, 1938, Defendants' Notice of Appeal filed. 12/30/38 Copy to Sylvan H. Hirsch.

Dec. 29, 1938, Copy of Clerk's notice of appeal to U. S. Circuit Court of Appeals, filed.

Jan. 11, 1939, Depositions of H. Bach et al., filed.

Jan. 11, 1939, Depositions of Huey Brown et al., filed.

Jan. 11, 1939, Depositions of Wm. Anderson et al., filed.

Jan. 11, 1939, Depositions of Paul Lang et al., filed.

Jan. 21, 1939, Motion by defendants for discovery and production of documents, filed.

Feb. 9, 1939, Certified copy of order of U. S. Circuit Court of Appeals dismissing appeal from order of Dec. 27, 1938, filed.

Mar. 13, 1939, Jury called and sworn.

Mar. 13, 1939, Trial—witnesses sworn.

Mar. 14, 1939, Trial resumed.

Mar. 15, 1939, Trial resumed.

Mar. 16, 1939, Trial resumed.

Mar. 17, 1939, Trial resumed.

Mar. 20, 1939, Trial resumed.

Mar. 21, 1939, In open Court: The Court announces the appointment of David Bachman, Esquire as Special Master to take accounting of damages. The jurors are excused—subject to call.

Mar. 21, 1939, Order of Court awarding sum of $500 to David Bachman for services in connection with Court's order of Dec. 27, 1938, filed.

Mar. 28, 1939, Report of Master, filed.

Mar. 29, 1939, Trial resumed.

Mar. 30, 1939, Trial resumed.

Mar. 30, 1939, Order of Court awarding sum of $500 to David Bachman for services in connection with Court's order of Mar. 20, 1939, filed.

Mar. 31, 1939, Trial resumed.

Apr. 3, 1939, Trial resumed.

Apr. 3, 1939, Verdict: In favor of plaintiff in sum of $237,310.85, and against American Federation of Full Fashioned Hosiery Workers, Phila. Branch No. 1, Local No. 706, and William Leader; and in favor of defendants Joseph Burge, Harry Ohmeig and Huey Brown and against the plaintiff.

Apr. 3, 1939, The jury returns its answers to certain interrogatories.

Apr. 3, 1939, Interrogatories and jury's answers thereto, filed.

Apr. 3, 1939, Plaintiff moves the Court to treble the verdict.

Eo die, Motion granted and ordered that verdict be recorded in sum of $711,932.55.

Apr. 4, 1939, Direction by Court to the Clerk to enter judgment and fixing counsel fees in sum of $25,000, filed.

Apr. 4, 1939, Judgment filed. 4/4/39 Noted and notice mailed.

Apr. 4, 1939, Defendant's motion at trial for directed verdict, filed for record.

Apr. 4, 1939, Defendant's points for charge, filed for record.

Apr. 13, 1939, Order of Court extending time for filing motion for new trial, filed. 4/14/39 Noted and notice mailed.

Apr. 14, 1939, Order of Court directing payment of Master's Fees, filed. 4/14/39 Noted and notice mailed.

Apr. 14, 1939, Stipulation of counsel extending time for filing motion and reasons for new trial, filed.

Apr. 14, 1939, Motion to set aside verdict and judgment, filed.

Apr. 18, 1939, Testimony (10 volumes) filed.

Apr. 18, 1939, Depositions offered in evidence (4 volumes), filed.

Apr. 18, 1939, Hearing sur motion for new trial continued to April 21, 1939.

Apr. 18, 1939, Motion and reasons for new trial, filed.

Apr. 18, 1939, Hearing sur motion for new trial continued to April 21, 1939.

Apr. 21, 1939, Argued sur motion for new trial and sur motion to set aside verdict.

Apr. 24, 1939, Opinion, Kirkpatrick J., denying motion to set aside verdict and motion for new trial, filed.

Apr. 24, 1939, Order of Court dismissing motions to set aside verdict and for a new trial, filed. 4/25/39 Noted and notice mailed.

Apr. 25, 1939, Plaintiff's bill of costs filed.

Apr. 25, 1939, Notice of appeal by Wm. Leader and American Federation of Full Fashioned Hosiery Workers, etc., filed. 4/25/39 Copy to Sylvan Hirsch, Esq., Atty. for Plff.

Apr. 25, 1939, Defendants' designation of matter to be included in record on appeal and approval by plaintiff, filed.

PLAINTIFF'S SECOND AMENDED COMPLAINT

(Filed Sept. 19, 1938)

Apex Hosiery Company, plaintiff above named, brings this suit to recover from the defendants herein named, the sum of $3,515,872.41 in accordance with the provisions of the Act of Congress of October 15, 1914, c. 323, Sec. 4, 38 Stat. 731 (15 U. S. C. A. Sec. 15) known as the Clayton Act, upon a cause of action whereof the following is an amended statement:

1. Apex Hosiery Company, plaintiff above named, is a corporation organized under the laws of the State of Pennsylvania, engaged in the manufacturing of hosiery which it sells throughout the United States. Its principal place of business is in Philadelphia, Pennsylvania, where its manufacturing plant is located.

2. The individual defendants herein are William Leader, President, Joseph Burge, Vice-President, Harry Omeig, Treasurer, and Huey Brown, Secretary, all of whom are officers of the Philadelphia Local Branch No. 1 of the American Federation of Full Fashioned Hosiery Workers, sometimes known as the American Federation of Hosiery Workers.

3. The American Federation of Full Fashioned Hosiery Workers (sometimes known as American Federation of Hosiery Workers) defendant above named, is an unincorporated association whose mem-

bers are employees in the hosiery industry, said association being commonly known and referred to as a hosiery union. This action is brought against said association and all of its officers and members, particularly the officers and members of its Philadelphia Branch No. 1, Local No. 706.

4. The jurisdiction of this Court is based upon the Act of Congress of October 15, 1914, c. 323, Sec. 4, 38 Stat. 731 (15 U. S. C. A. Sec. 15) known as the Clayton Act, which entitles any person who is injured in his business or property by reason of anything forbidden by the so-called "anti-trust laws" of the United States, (the Act of Congress of July 2, 1890, c. 647, Sec. 1 et seq., 26 Stat. 209, 15 U. S. C. A. Sec. 1 et seq., known as the Sherman Act, and the Act of Congress of October 15, 1914, c. 323, Sec. 1 et seq., 38 Stat. 730, 15 U. S. C. A. Sec. 12 et seq., known as the Clayton Act), to recover three-fold the damages sustained by him, together with the costs of suit, including a reasonable attorney's fee.

5. The total capital employed by plaintiff in the conduct of its hosiery business is upwards of $3,500,000., and said company employs approximately 2,500 men and women in its manufacturing operations. The total annual sales of plaintiff are approximately $5,000,000., and upwards of 85% of said business represents sales and shipments to states other than Pennsylvania.

6. The raw materials used by plaintiff in its manufacturing of hosiery, including more particularly the silk required for manufacturing said ho-

siery, are purchased by and shipped to plaintiff's manufacturing plant in Philadelphia from numerous points outside of the State of Pennsylvania, including other states and foreign countries, and said raw materials after their interstate shipment to plaintiff, are then converted into hosiery, which in turn is sold, shipped and distributed by plaintiff from its Philadelphia plant throughout the United States. The wrongful acts committed by defendants, as hereinafter related, restrain or obstruct the free flow of plaintiff's interstate commerce and business.

7. At all times hereinafter mentioned, plaintiff operated its business on what is popularly known as the "open shop principle" under which the company had no contractual relations with any outside union, nor were its employees required to belong to any such union, but the company nevertheless dealt directly and collectively bargained with its employees on all matters concerning their rates of pay, hours of work and general working conditions. Plaintiff is informed, believes and therefore avers that but a very small minority of its employees were members of the defendant union on May 6, 1937, and but a very small minority of its employees were members of the defendant union on any of the dates hereinafter mentioned, of their own free will and accord.

8. For some time prior to May 6, 1937, defendant union unsuccessfully endeavored to enroll all of plaintiff's employees in its membership, which employees, however, preferred, of their own free will and accord, not to join any organized union and more particularly, not to join defendant's union.

9. Plaintiff is informed, believes, and therefore avers that prior to May 6, 1937, and on all dates hereinafter mentioned, by reason of defendant's failure to unionize plaintiff's plant on what is known to be a "closed shop" basis, defendants thereupon decided upon more drastic and extreme measures to force the unionization of plaintiff's plant, and to force plaintiff to sign what is popularly known as a "closed shop union agreement" under which only the members of defendant's union can be employed to work in plaintiff's plant; plaintiff would be compelled to deduct union dues from the pay of all its workers, and in other respects plaintiff would be under the complete domination of the defendant union, and to this end, defendants did unlawfully seek to force, coerce, intimidate and compel the employees of plaintiff to become members of defendant's union, and to compel plaintiff to sign a closed shop union agreement, and defendants have on numerous occasions threatened plaintiff's employees with severe bodily harm, put them in fear of their lives and threatened harm to the members of their families, unless said employees would become members of defendant's union, against their own free will and accord, and in many instances, some of said threats have actually been carried out.

10. In addition to said threatened attacks and the use of force and intimidation against plaintiff's employees, defendants unlawfully combined and conspired together to force entry into plaintiff's plant; to damage its machinery and equipment; and thereafter to retain exclusive and unlawful possession of plaintiff's plant, with the purpose and intent of re-

straining, obstructing and interfering with plaintiff's manufacturing operations and restraining or controlling the supply of plaintiff's products entering or moving in interstate commerce, or of accomplishing an undue and unreasonable restraint of interstate commerce in said products; and for the further purpose of forcing plaintiff to sign a closed shop union agreement against its own free will and accord. To this end, defendants committed the unlawful acts related in this and the succeeding paragraphs of this complaint, to wit:

On May 6, 1937, while the plaintiff's plant, situate at the Southeast Corner of Fifth and Luzerne Streets, Philadelphia, was closed, its manufacturing operations having ceased for that day, the members of defendant's union and/or those instigated by them, through the use of force and violence and without warning to plaintiff's officers and in pursuance of said unlawful conspiracy, broke down the locked doors of plaintiff's factory, stoned its windows on four floors and thereupon forced their way into the factory premises, destroying office partitions, desks, typewriters, computing machines, overturning files, scattering records, throwing finished hosiery about the floor and out the windows, and did otherwise wreck and demolish the machinery and equipment on said premises. In addition to the above, they set upon William Meyer, President of Apex Hosiery Company and F. Elwood Struve, its general manager, and by physical force and violence severely injured both of the aforesaid persons, William Meyer receiving a swollen head, cuts, bruises and contusions of the body, and F. Elwood Struve receiving two broken ribs and other bodily harm. In

addition, defendant's members and/or those instigated by them set upon the employees of Apex Hosiery Company who were still on the factory premises and who were not members of the defendant union, severely injuring many of them, more particularly two of said persons, necessitating their removal to a hospital in a serious condition.

Immediately upon the completion of said forcible entry and destruction of plaintiff's premises, defendants William Leader and other members of defendant union, in large numbers, approached William Meyer, plaintiff's President, in the demolished office of the Company and demanded that he, then and there, although in a dazed and injured condition, sign a closed union shop agreement. This he refused to do.

11. Plaintiff is informed, believes and therefore avers that all of the aforesaid wrongful acts against the employees of plaintiff and against its plant and equipment and the resulting destruction and personal injuries hereinabove related, were carried out under the personal direction, supervision and observation of the defendant William Leader, as President of the union, who was present at the time said attack took place.

12. After the occurrences hereinabove complained of on May 6, 1937, defendants caused and permitted approximately 150 or more of their members to take and continuously retain exclusive possession of plaintiff's premises through the medium of what is popularly known as a "sit-down", up to and including June 23, 1937, during which period de-

fendants refused to permit plaintiff's employees who desired to work and who were not members of the union, to follow the usual and customary occupations and duties, and furthermore, refused to permit plaintiff's office employees to come upon the premises and keep and maintain the books and records of plaintiff. To this end, defendants barred the doors to all officers and employees of the plaintiff, thereby refusing them access to their own plant and working premises, the defendants placing new locks and bolts on all entrances to plaintiff's plant in order to carry out this purpose.

13. The aforesaid unlawful possession of plaintiff's premises by the defendants continued from May 6, 1937 to June 23, 1937, the date on which the defendants and/or those whom they caused or directed to "sit-down" on plaintiff's premises vacated said premises, pursuant to an Order of the United States District Court for the Eastern District of Pennsylvania, as of March Term, 1937, No. 9741, entered June 22, 1937, commanding them so to do, and pursuant to the mandate of the United States Circuit Court of Appeals for the Third Circuit, entered June 21, 1937, as of March Term, 1937, No. 6479, in which the aforesaid persons in possession of plaintiff's premises were declared by said Court to be "lawless individuals" who had "forced themselves upon and into the plaintiff's property" and thereafter "retained illegal possession of it".

14. As a result of the unlawful entry upon plaintiff's premises by the defendants and/or other persons acting for and under the direction of defendants, and the use of force and violence by them as

aforesaid, defendants damaged plaintiff's factory premises and the merchandise, machinery and equipment therein located as follows:

(a) The factory doors, factory windows, office partitions, office furniture and equipment, venetian blinds, desks, typewriters, comptometers, label pasting machinery, sealing machines, stenciling machines, multigraph equipment, and other office equipment and machinery (other than knitting machines), plumbing equipment, electrical equipment, time recording equipment, vapor lights, hardware, paint, fixtures and miscellaneous mill equipment were damaged or destroyed, resulting in a loss to plaintiff of $17,428.53, which loss is itemized as follows:

Glazing of Windows	$ 830.08
Plumbing Repairs and Supplies	359.10
Hardware Repairs and Supplies	659.01
Electrical Repairs and Supplies	776.73
Painting	98.06
New Front Door	274.00
Repairs to Time Recording System	895.00
Repairs and Replacement of Fixtures	3,500.00
Replacement of Broken Tubes for Vapor Lights	1,460.70
Repair and Replacement of Stenciling Machine	269.25
Repairs to Multigraph Equipment	106.71
Repairs to Label Pasting Machines	180.00
Repair and Replacement of Sealing Machine	119.35
Miscellaneous Repairs and Replacement of Mill Furniture and Equipment	668.89

Repairs to Desks, Typewriters, Adding Machines, etc.	$ 1,561.76
Labor costs for Repairing Other Damaged Office Equipment	1,000.00
Repairs to and Replacement of Venetian Blinds in Office and Plant	1,066.00
Repairs and Miscellaneous Replacement to Office Equipment	40.94
Miscellaneous Repairs in Office and Plant	1,130.92
Additional Miscellaneous Damage	1,508.08
Machinery (other than Knitting Machines)	527.15
Miscellaneous Labor Repairing Damage	360.00
Repairs to Fence	37.50
	$17,428.53

All of the above figures represent the fair, reasonable and market value of repairing or replacing the damaged or destroyed premises and equipment.

(b) Finished merchandise, merchandise in the process of manufacture and mill supplies were damaged, destroyed or stolen, resulting in a loss to plaintiff of $7,277.30, which loss is itemized as follows:

Inventory Shortage	$ 2,593.50
Damaged Hosiery	1,229.59
Labor Cost for Sorting Wareroom Merchandise	623.99
Silk and Yarn Waste on Damaged Machines	731.93
Stolen Mill Supplies, including 6M—45 C. G. Rd. Split Dividers, 19 mender hooks, and miscellaneous supplies	2,098.29
Total	$ 7,277.30

All of the above figures represent the fair, reasonable and market value of repairing or replacing the damaged, destroyed and missing supplies and merchandise.

15. Between May 6, 1937, and June 23, 1937, during the aforesaid unlawful possession of plaintiff's premises by the defendants and such other persons as were acting for and under the direction of defendants, said persons did unlawfully damage and destroy plaintiff's factory premises and the equipment and merchandise therein located in the following respects:

(a) On or about June 10, 1937, 28 legging machines and 2 footing machines were wilfully damaged and destroyed, the repairing of which machines required re-needling, new sinker heads, new knocking-over bars, new narrowing fingers, new lock-stitch bars, cotton and felt, the cost of which, including labor, was $10,160.36, which cost represents the fair, reasonable and market value of repairing or replacing said damaged equipment.

(b) On or about June 21, 1937 and/or June 22, 1937, 102 additional legging, footing and looping machines were damaged or destroyed, the repairing of which machines required new parts including needles, points, lace fingers, narrowing fingers, sinker heads and felts, the cost of which, including labor, was $56,450.22, which cost represents the fair, reasonable and market value of repairing or replacing said damaged equipment.

(c) In addition to the aforesaid damaged machinery, the remaining 227 legging and footing ma-

chines on plaintiff's factory premises were either damaged, destroyed or permitted to fall into disrepair because of the aforesaid force and violence by the defendants and/or other persons acting for and under the direction of defendants and during the illegal possession of plaintiff's premises by the defendants, especially since this machinery required special and constant care and attention; the windows which were broken and left open by the defendants greatly increased this need of attention and care; defendants failed to repair the windows and prevented the plaintiff from doing so; and defendants wholly neglected the care of the machines and forcibly prevented plaintiffs or its agents from entering the premises to enable it to do so. The repairing of said machinery required re-threading, new felts, silk back-winding and preparation for productive work, the cost of which, including labor, was $12,833.11, which cost represents the fair, reasonable and market value of repairing or replacing said damaged equipment.

(d) The cost of transporting the tools and materials required in connection therewith was $589.20, which is the fair, reasonable and market value for such work.

(e) The defendants and/or other persons acting for and under their direction, during their illegal possession of plaintiff's premises, damaged the roof of plaintiff's premises, its silk, finished hosiery, and hosiery in the process of manufacture, time recording system and miscellaneous machinery and equipment (other than knitting machines) resulting in a loss to plaintiff of $17,218.75, which loss is itemized as follows:

Repairs to Roof	$ 47.60
Damaged Silk	202.18
Reprocessing of Soiled Hosiery	3,792.67
Repairing of Time Recording System	1,218.50
Miscellaneous Repairs and Replacement of Mill Equipment	668.19
Miscellaneous Repairs to Office Equipment	1,130.91
Repairs to Machinery (other than Knitting Machines)	1,013.31
Cost of Labor for Repairing the above Damage to Plant and Equipment	9,145.39
	$17,218.75

All of the above figures represent the fair, reasonable and market value of repairing or replacing the damaged or destroyed premises, supplies and equipment.

16. By reason of the aforesaid damage and destruction of plaintiff's factory premises, due to the aforesaid illegal acts of defendants and the damage and destruction of the machinery, merchandise and equipment therein located, which is more particularly set forth hereinbefore, and by reason of plaintiff's inability to operate its manufacturing machinery and equipment and ship its merchandise, due to the aforesaid illegal possession and destructive acts of defendants, plaintiff sustained loss and damage as follows:

(a) The plaintiff was unable to complete the manufacture of, ship and deliver approximately 100,000 dozen pairs of various types and styles of stockings which were in the course of manufacture

or in a finished state on May 6, 1937, and for which it had already received orders, the filling of which orders would have resulted in a considerable profit to plaintiff.

(b) The aforesaid 100,000 dozen pairs of stockings which plaintiff had on hand in the course of manufacture or in a finished state on May 6, 1937, were of a seasonable style and character, the delivery date for which passed during the period when plaintiff was unable to take possession of and operate its factory as hereinabove related, and as a result the market value thereof dropped considerably, resulting in great loss to plaintiff.

(c) Plaintiff was unable to manufacture and ship additional merchandise and was forced to accept cancellations of orders already received and to reject new orders thereafter received, all of which orders had been or could have been accepted at prices which would have resulted in considerable profit to the plaintiff, all of which profit and business was lost to the plaintiff.

(d) During the period May 6, 1937 to June 23, 1937, during which defendants retained illegal possession of plaintiff's plant as hereinbefore related and during a period of six months thereafter, which was the time required to repair the damaged machinery and equipment, plaintiff, although unable to carry out its usual manufacturing and selling operations was nevertheless compelled to continue to meet its fixed charges, normal carrying charges, interest on investments, fixed expenses of operations, and the payment of salaries to officers and certain employees which could not be avoided, together with other and various expenses.

(e) By reason of the matters more particularly set forth in Paragraphs (a) to (d) hereinabove, plaintiff is informed, believes and therefore avers that it sustained a loss or damage equal to or in excess of the sum of $550,000.00.

17. By reason of the aforesaid unlawful possession of and damage to plaintiff's premises by defendants, and plaintiff's resultant inability to operate its machinery and equipment and fill its orders for hosiery received from customers throughout the United States, plaintiff is informed, believes and therefore overs that it lost the good will of those customers whose orders could not be accepted and filled by plaintiff, all of which has and will result in loss and damage to plaintiff in an amount equal to or in excess of the sum of $500,000.00.

18. Plaintiff is informed, believes and therefore avers that all of the aforesaid unlawful acts of force, intimidation, threats, violence, forcible entry, illegal possession, destruction of property and injury to persons, were authorized or participated in or ratified by the officers and individual defendants named in this amended Complaint, and by the members of defendant's union.

19. Plaintiff is informed, believes and therefore avers that all of the aforesaid unlawful acts of force, intimidation, threats, violence, forcible entry, illegal possession, destruction of property, injury of persons and other acts hereinbefore related, in which the defendants unlawfully combined and conspired together, were entered into, perpetrated and carried out by defendants with the purpose and intent of

unlawfully restraining or controlling plaintiff's supply of raw materials and finished merchandise entering and moving in interstate commerce, or of accomplishing an undue and unreasonable restraint of interstate commerce in the hosiery manufactured by plaintiff.

20. All of the acts of defendants hereinabove complained of, constitute unfair labor practices which directly affect, burden and obstruct interstate commerce.

21. The total damages directly sustained by plaintiff because of the aforesaid wrongful acts of defendants, as hereinabove related, equal $1,171,957.47, and under the provisions of the Clayton Act (the Act of Congress of October 15, 1914, c. 323, Sec. 4, 38 Stat. 731, 15 U. S. C. A. Sec. 15), plaintiff is entitled to recover the aforesaid damages three-fold, together with the costs of suit, including a reasonable attorney's fee.

Wherefore, plaintiff seeks to recover from defendants the sum of $3,515,872.41, with interest thereon at the rate of six per centum per annum from the date of the filing of this suit, together with costs of this suit, including a reasonable attorney's fee.

(sgd) SYLVAN H. HIRSCH,
1632 Bankers Securities Building, Philadelphia, Pa.,
Attorney for Plaintiff.

ARNO P. MOWITZ,
HARRY G. SUNDHEIM,
SUNDHEIM, FOLZ & SUNDHEIM,
Of Counsel for Plaintiff.

AFFIDAVIT OF DEFENSE OF WILLIAM LEADER

(Filed Oct. 27, 1938)

State of Pennsylvania,
County of Philadelphia, ss:

William Leader, being duly sworn according to law, deposes and says that he is one of the defendants above named; that he has a full, just, complete and legal defense to all of the Plaintiff's Second Amended Statement of Claim, in the above entitled matter, and makes answer thereto as follows, to wit:

1. Admitted.

2. Admitted.

3. Admitted.

4. It is specifically denied that this court has jurisdiction based upon the Act of Congress of October 15, 1914, c. 323, Sec. 4, 38 Stat. 731, (15 U. S. C. A. Sec. 15) known as the Clayton Act, which entitles any person who is injured in his business or property by reason of anything forbidden by the so-called "anti-trust laws" of the United States, (the Act of Congress of July 2, 1890, c. 647, Sec. 1 et seq., 26 Stat. 209, 15 U. S. C. A. Sec. 1 et seq., known as the Sherman Act, and the Act of Congress of October 15, 1914, c. 323, Sec. 1 et seq., 38 Stat. 730, 15 U. S. C. A. Sec. 12, et seq., known as

the Clayton Act), to recover three-fold the damages sustained by him, together with the costs of suit, including a reasonable attorney's fee; but to the contrary it is averred that the allegations of the plaintiff's statement of claim do not aver such facts as would grant this court jurisdiction in accordance with the acts above recited and the decisions thereunder, and this defendant therefore denies the allegations set forth in Paragraph 4.

5. This defendant admits that the plaintiff company employs approximately 2500 men and women in its manufacturing operations. Defendant has made inquiry, but is unable to ascertain the truth of the other averments in Paragraph 5; that the said facts are entirely within the exclusive knowledge of the plaintiff herein, and not available to the defendant, and the defendant therefore denies them, and if found material at the trial of the issue joined, will demand strict proof thereof in accordance with the allegations set forth therein.

6. Defendant has no knowledge or information as to the averments set forth in Paragraph 6, relating to the purchase of raw material and the sale and distribution thereof by the said plaintiff. He has attempted to ascertain this information, but the same is within the exclusive knowledge of the plaintiff herein, and the defendant is therefore unable to either admit or deny the allegations set forth therein, and if the same become material at the trial of the issue joined, demands strict proof of the averments in Paragraph 6.

Defendant denies that the wrongful acts committed by defendants as hereinafter related, restrain or obstruct the free flow of plaintiff's interstate commerce and business; but to the contrary defendant avers that no wrongful acts of any nature, kind or character were committed by this defendant in his representative capacity or personally.

7. Defendant denies that plaintiff operated its business on what is popularly known as the "open shop principle" under which the company had no contractual relations with any outside union, nor were its employees required to belong to any such union, but that the company nevertheless dealt directly and collectively bargained with its employees on all matters concerning their rates of pay, hours of work and general working conditions; but to the contrary defendant avers that the plaintiff operated its business on what is popularly known as an anti-union shop, and did not have any collective bargaining arrangements with any person or group of persons in its employ.

This defendant, being advised by counsel, believes and therefore avers that as an individual defendant, the averments as to membership in the defendant union are not directed against him as an individual defendant, and therefore he is not required to reply to same. If, however, the matter becomes material as to this defendant, he demands strict proof thereof at the time of the issue joined.

8. Defendant being informed by counsel, believes and therefore avers that the averments set forth therein relate to the defendant union, and

therefore do not require an answer by this defendant. If, however, the matter becomes material as to this defendant, he demands strict proof thereof at the time of the issue joined.

9. Defendant denies that prior to May 6, 1937, and on all dates hereinafter mentioned, by reason of defendant's failure to unionize plaintiff's plant on what is known to be a "closed shop" basis, the defendants thereupon decided upon more drastic and extreme measures to force the unionization of plaintiff's plant, and to force plaintiff to sign what is popularly known as a "closed shop union agreement" under which only the members of defendant's union can be employed to work in plaintiff's plant; that plaintiff would be compelled to deduct union dues from the pay of all its workers, and in other respects plaintiff would be under the complete domination of the defendant union, and to this end defendant did unlawfully seek to force, coerce, intimidate and compel the employees of plaintiff to become members of defendant's union, and to compel plaintiff to sign a closed shop union agreement, and that defendants have on numerous occasions threatened plaintiff's employees with severe bodily harm, put them in fear of their lives and threatened harm to the members of their families, unless said employees would become members of defendant's union, against their own free will and accord, and in many instances, some of said threats had actually been carried out. To the contrary, it is averred that this defendant individually or in a representative capacity was at no time a party to any agreement or understanding to use drastic and

extreme measures to force unionization of the plaintiff's plant, or to force plaintiff to sign a closed shop union agreement; and that this defendant individually or in a representative capacity did not in any manner whatsoever, seek to force, coerce, intimidate or compel employees of plaintiff to become members of the defendant's union. That this defendant, individually and in a representative capacity, did not at any time threaten any employees of the plaintiff with severe bodily harm, or put them in fear of their lives; that this defendant, individually or in a representative capacity, did not threaten any member in the families of the employees of the plaintiff, and did not at any time carry out any threats as averred in Paragraph 9.

10. It is denied that in addition to said threatened attacks and the use of force and intimidation against plaintiff's employees, defendant individually and in a representative capacity unlawfully combined and conspired together to force entry into plaintiff's plant, to damage its machinery and equipment, and thereafter to retain exclusive and unlawful possession of plaintiff's plant, with the purpose and intent of restraining, obstructing and interfering with plaintiff's manufacturing operations, and restraining or controlling the supply of plaintiff's products entering or moving in interstate commerce, or of accomplishing an undue and unreasonable restraint of interstate commerce in said products, and for the further purpose of forcing plaintiff to sign a closed shop union agreement against its own free will and accord. To the contrary, this defendant avers that he, in his repre-

sentative capacity or personally, did not at any time unlawfully combine and conspire with any other person or persons, organization or organizations, to force entry into the plaintiff's plant, or to commit any of the other acts complained of in Paragraph 10. This defendant did not at any time, in his representative capacity or personally, conspire to or do any act which might cause unreasonable restraint in interstate commerce of the products of the plaintiff.

Defendant denies that he, in his representative capacity or personally, took part in, instigated any other person to participate, or conspired to commit the acts complained of in Paragraph 10, more specifically, the breaking into the plant of the plaintiff and committing the damages therein set forth in detail, and denies each and every the averment and allegations as set forth in said Paragraph 10 relating thereto, as if set forth herein in extenso.

This defendant avers that at the special instance and request of the defendant, his agents or employees, he, in his individual capacity, was requested to come into the plant of the plaintiff by the said William Meyers, and therefore denies that he and other members of the defendant union in large number approached the said William Meyers for any purpose whatsoever. It is admitted that this defendant did have a conversation with the said William Meyers relating to collective bargaining, but it is denied that he at that time demanded that the said William Meyers sign a closed shop union agreement.

11. This defendant avers that the information of the plaintiff upon which it bases its allegations in Paragraph 11 is incorrect, and therefore denies that he, as President of the Union, was present at all times that the alleged acts complained of were committed; and further denies that they were carried out under his personal direction, supervision and observation; but to the contrary avers that he did not appear upon the scene of the occurrence until a time after some of the acts complained of had commenced; that he did not at any time appear in any representative capacity and that he was not authorized to act for and on behalf of the union in any matters whatever relating to the occurrences set forth in the plaintiff's statement of claim. He does further aver that he personally did not direct or supervise any of the alleged acts complained of by the plaintiff, and did not participate therein.

12. Defendant denies that after the occurrences hereinabove complained of on May 6, 1937, defendants caused and permitted approximately 150 or more of their members to take and continuously retain exclusive possession of plaintiff's premises through the medium of what is popularly known as a "sit-down", up to and including June 23, 1937, during which period defendants refused to permit plaintiff's employees who desired to work and who were not members of the union, to follow the usual and customary occupations and duties, and furthermore, refused to permit plaintiff's office employees to come upon the premises and keep and maintain the books and records of plaintiff; and that to this end, defendants barred the doors to all officers and

employees of the plaintiff, thereby refusing them access to their own plant and working premises, the defendants placing new locks and bolts on all entrances to plaintiff's plant in order to carry out this purpose. To the contrary, it is averred that this defendant did not, either in a representative capacity or personally, take any part in the several acts complained of in Paragraph 12, nor did he participate in any of the acts alleged therein.

13. It is denied that this defendant, either in a representative capacity or personally, retained unlawful possession of plaintiff's premises from May 6, 1937 to June 23, 1937. It is further denied that he caused or directed any other person or persons to sit down on plaintiff's premises. It is admitted that an order of the United States District Court directed those persons in possession of the plaintiff's premises to vacate the same.

14. It is denied that this defendant, in a representative capacity or personally, unlawfully entered upon the plaintiff's premises and it is further denied that any other person or persons were acting under the direction or control of this defendant, or that this defendant in any capacity directed the use of force and violence against the plaintiff, or to damage any of the plaintiff's premises, machinery or equipment.

This defendant is unable to reply in detail as to the other averments of Paragraph 14 relating to the items of damage. The said items are entirely within the personal knowledge and information of the plaintiff herein, and therefore this defendant can-

not either admit or deny the averments as set forth; and if same becomes material, will demand at the time of the issue joined, strict proof of the various items as listed, and the fair and reasonable market value thereof.

15. It is denied that this defendant, in a representative capacity or personally, unlawfully entered upon the plaintiff's premises, and it is further denied that any other person or persons were acting under the direction or control of this defendant, or that this defendant in any capacity directed the use of force and violence against the plaintiff, or to damage any of the plaintiff's premises, machinery and equipment.

Defendant has no knowledge or information as to any of the averments of items of damage set forth therein, or by whom they were committed; that defendant is unable to obtain any information relevant thereto, as same is entirely within the exclusive knowledge of the plaintiffs herein, and if the matter becomes material, demands strict proof thereof at the time of the issue joined, both as to the items of damage, and the fair and reasonable market value thereof.

16. It is denied that the defendant, either in a representative capacity or personally, was in any manner responsible for the alleged damage and destruction of plaintiff's factory premises, or responsible for any illegal acts of any person or persons committed, and further avers that he was not responsible for the inability of the plaintiff to op-

erate its manufacturing machinery and equipment and to ship its merchandise.

Defendant being advised by counsel, believes and therefore avers that all of the allegations set forth in Paragraph 16, are of a speculative and indefinite nature, and not such as should be considered as an item of damage in this action, and for that purpose specifically denies each and every of the allegations of Paragraph 16, as if denied in extenso herein. If deemed material to the issue when joined, this defendant requests strict proof of each and every of the allegations thereof.

17. Defendant denies that he, individually or in a representative capacity, unlawfully took possession of and damaged the plaintiff's premises, and further avers that the allegations in Paragraph 17 as to loss of orders for hosiery are uncertain and conjectural in nature, and are not proper items of damage in the instant case, and therefore denies same. If this item shall be material to the issue joined, the defendant being unable to obtain any information relative thereto, the same being entirely and exclusively within the knowledge of the plaintiff, demands strict proof thereof by the plaintiff.

18. It is averred that the plaintiff has been misinformed as to the allegations set forth in Paragraph 18, and it is specifically denied that all of the aforesaid unlawful acts of force, intimidation, threats, violence, forcible entry, illegal possession, destruction of property and injury to persons, were authorized or participated in or ratified by the offi-

cers and individual defendants named in this amended complaint, and by the members of defendant's union; but to the contrary it is averred that any and all of the alleged acts complained of by the plaintiff were not committed by this defendant personally or as a representative or agent for any other person, persons, or organization, and that none of the acts were authorized by this defendant in his personal or representative capacity, and that this defendant did not commit any of the acts complained of.

19. Defendant avers that the plaintiff has been misinformed as to the allegations set forth in Paragraph 19, and therefore denies that all of the aforesaid unlawful acts of force, intimidation, threats, violence, forcible entry, illegal possession, destruction of property, injury of persons and other acts hereinbefore related, in which the defendants unlawfully combined and conspired together, were entered into, perpetrated and carried out by defendants with the purpose and intent of unlawfully restraining or controlling plaintiff's supply of raw materials and finished merchandise entering and moving in interstate commerce, or of accomplishing an undue and unreasonable restraint of interstate commerce in the hosiery manufactured by plaintiff; but to the contrary avers that this defendant did not in his personal capacity or as a representative of the defendant union, unlawfully combine or conspire together with any other person or persons to unlawfully restrain or control plaintiff's supply of raw materials and the finished merchandise entering and moving in interstate commerce, or to ac-

complish an unreasonable restraint of interstate commerce in the hosiery manufactured by the plaintiff. This defendant avers that he took no part in the acts complained of by the plaintiff in its statement of claim, and that he did not conspire to commit any of the acts complained of, nor did he instigate any other persons to commit any of the acts complained of.

20. Defendant being informed by counsel, believes and therefore avers that the allegations set forth therein are a legal conclusion, and therefore need not be answered by him.

21. It is specifically denied that the damages sustained by the plaintiff because of the aforesaid wrongful acts, were due to any act or actions of the defendant as above related, and it is further denied that they equal $1,171,957.47. It is further denied that the provisions of the Clayton Act as set forth in Paragraph 21 relate to the rights of the plaintiff herein, but to the contrary it is averred that the acts complained of by the plaintiff herein do not come within the provisions of the Clayton Act. It is further averred that this defendant had no part, either personally or in a representative capacity, in any of the alleged acts complained of by the plaintiff herein; that as to the item of damages set forth therein, the said sum is entirely within the personal knowledge of the plaintiff herein, and the defendant cannot either admit or deny the averments thereof, for the reasons more specifically set forth above; and if the same becomes material, demands strict proof thereof at the time of trial.

Wherefore, this defendant requests this Honorable Court to dismiss the action against him, either in his individual capacity or as agent for the defendant union.

(sgd) WILLIAM LEADER.

BENJ. R. SIMONS,
Attorney for Defendant.

Sworn to and subscribed before me this 26th day of October, A. D., 1938.

DOROTHY BONX,
Notary Public.

(Seal)

My commission expires 3/9/39.

AFFIDAVIT OF DEFENSE ON BEHALF OF AMERICAN FEDERATION OF FULL FASHIONED HOSIERY WORKERS (sometimes known as American Federation of Hosiery Workers), PHILADELPHIA BRANCH NO. 1, LOCAL NO. 706, AN UNINCORPORATED ASSOCIATION, ON BEHALF OF ITSELF AND ALL THE MEMBERS THEREOF

(Filed Oct. 27, 1938)

State of Pennsylvania:
County of Philadelphia, ss:

Huey Brown, being duly sworn according to law, deposes and says that he is Secretary of the American Federation of Full Fashioned Hosiery Workers (sometimes known as American Federation of Hosiery Workers), Philadelphia Branch No. 1, Local No. 706, an unincorporated association, on behalf of itself and all the members thereof, one of the defendants above named, and files the following, its defense to the Plaintiff's Second Amended Statement of Claim, and does aver that it has a full, complete and entire legal defense to all of the averments set forth therein, and replies in particular to each of them as follows:

1. Admitted.

2. It is admitted that at the time of the occurrence set forth in the Statement of Claim, the per-

sons named therein as officers were officers of this defendant.

3. Admitted.

4. It is specifically denied that this court has jurisdiction based upon the Act of Congress of October 15, 1914, c. 323, Sec. 4, 38 Stat. 731 (15 U. S. C. A. Sec. 15), known as the Clayton Act, which entitles any person who is injured in his business or property by reason of anything forbidden by the so-called "anti-trust laws" of the United States, (the Act of Congress of July 2, 1890, c. 647, Sec. 1 et seq., 26 Stat. 209, 15 U. S. C. A. Sec. 1 et seq., known as the Sherman Act, and the Act of Congress of October 15, 1914; c. 323, Sec. 1 et seq., 38 Stat. 730, 15 U. S. C. A. Sec. 12, et seq., known as the Clayton Act), to recover three-fold the damages sustained by him, together with the costs of suit, including a reasonable attorney's fee; but to the contrary it is averred that the allegations of the Plaintiff's Statement of Claim do not aver such facts as would grant this court jurisdiction in accordance with the acts above recited and the decisions thereunder, and this defendant therefore denies the allegations set forth in Paragraph 4.

5. This defendant admits that the plaintiff company employs approximately 2500 men and women in its manufacturing operations. Defendant has made inquiry, but is unable to ascertain the truth of the other averments in Paragraph 5; that the said facts are entirely within the exclusive knowledge of the plaintiff herein, and not available unto the de-

fendant, and the defendant therefore denies them, and if found material at the trial of the issue joined, will demand strict proof thereof in accordance with the allegations set forth therein.

6. Defendant has no knowledge or information as to the averments set forth in Paragraph 6 relating to the purchase of raw material and the sale and distribution thereof by the said plaintiff. They have attempted to ascertain this information, but the same is within the exclusive knowledge of the plaintiff herein, and the defendant is therefore unable to either admit or deny the allegations set forth therein, and if the same become material at the trial of the issue joined, demands strict proof of the averments in Paragraph 6.

Defendant denies that the wrongful acts committed by defendants as hereinafter related, restrain or obstruct the free flow of plaintiff's interstate commerce and business; but to the contrary defendant avers that no wrongful acts of any nature, kind or character were committed by this defendant or on its behalf by any of its agents or members.

7. Defendant denies that plaintiff operated its business on what is popularly known as the "open shop principle" under which the company had no contractual relations with any outside union, nor were its employees required to belong to any such union, but that the company nevertheless dealt directly and collectively bargained with its employees on all matters concerning their rates of pay, hours of work and general working conditions. To the contrary, defendant avers that the plaintiff operated its

business on what is popularly known as an anti-union shop, and had no collective bargaining arrangements with any person or group of persons in its employ.

Defendant avers that the plaintiff has been misinformed as to the facts that but a very small minority of its employees were members of the defendant union on May 6, 1937, and but a very small minority of its employees were members of the defendant union on any of the dates hereinafter mentioned, of their own free will and accord; but to the contrary avers that a large number of employees of the plaintiff were members of the defendant union on May 6, 1937, and the dates thereafter mentioned in the statement of claim, and that all of the said members were affiliated of their own free will and accord.

8. It is denied that for some time prior to May 6, 1937 defendant union unsuccessfully endeavored to enroll all of plaintiff's employees in its membership, which employees, however, preferred of their own free will and accord not to join any organized union, and more particularly not to join defendant's union. To the contrary, it is averred that those employees of the plaintiff who affiliated with the defendant union, did so of their own free will and accord, and not as a result of any efforts or attempts by the defendant to enroll them among its membership.

9. Defendant avers that the plaintiff has been misinformed as to the allegations set forth in Paragraph 9, and therefore denies that prior to May 6, 1937 and on all dates thereafter mentioned, by rea-

son of defendant's failure to unionize plaintiff's plant on what is known to be a "closed shop" basis, defendants thereupon decided upon more drastic and extreme measures to force the unionization of plaintiff's plant, and to force plaintiff to sign what is popularly known as a "closed shop union agreement" under which only the members of defendant's union can be employed to work in plaintiff's plant; plaintiff would be compelled to deduct union dues from the pay of all its workers, and in other respects plaintiff would be under the complete domination of the defendant union, and to this end defendants did unlawfully seek to force, coerce, intimidate and compel the employees of plaintiff to become members of defendant's union, and to compel plaintiff to sign a closed shop union agreement, and defendants had on numerous occasions threatened plaintiff's employees with severe bodily harm, put them in fear of their lives and threatened harm to the members of their families, unless said employees would become members of defendant's union, against their own free will and accord, and in many instances, some of said threats had actually been carried out. To the contrary, defendant avers that it did attempt to obtain a closed shop contract with the plaintiff company, which contract was similar to each and every other contract entered into by the defendant and the other hosiery manufacturers in the City of Philadelphia. Defendant denies, however, that it decided upon more drastic and extreme measures to force the unionization of plaintiff's plant, and avers that no action was taken or contemplated by the defendant to use any drastic or extreme measures

to force plaintiff to sign a closed shop union agreement. Defendant further avers that the plaintiff is misinformed as to the inferences it has drawn and averred in Paragraph 9 as to the content of a closed shop union agreement, and that the contract did not provide that the plaintiff would be under the complete domination of the defendant union. Defendant further avers that any of the employees of the plaintiff company who affiliated with the defendant, did so of their own free will and accord, and that no force, coercion or intimidation was practiced upon any of the plaintiff's employees. Defendant further denies that any threats had actually been carried out by it with regards thereto.

10. Defendant denies that in addition to said threatened attacks and the use of force and intimidation against plaintiff's employees, defendants unlawfully combined and conspired together to force entry into plaintiff's plant; to damage its machinery and equipment, and thereafter to retain exclusive and unlawful possession of plaintiff's plant, with the purpose and intent of restraining, obstructing and interfering with plaintiff's manufacturing operations and restraining or controlling the supply of plaintiff's products entering or moving in interstate commerce, or of accomplishing an undue and unreasonable restraint of interstate commerce in said products, and for the further purpose of forcing plaintiff to sign a closed shop union agreement against its own free will and accord. To the contrary, defendant avers that it did not unlawfully combine and conspire together to force entry into the plain-

tiff's plant; that it did not conspire and combine together to damage the machinery and equipment of the plaintiff and to retain exclusive and unlawful possession of the plaintiff's plant for the purposes set forth in Paragraph 10, nor for any other purpose. Defendant denies that it committed any of the unlawful acts related in the averments of Paragraph 10.

It is specifically denied that members of the defendant union and/or those instigated by them, through the use of force and violence and without warning to plaintiff's officers and in pursuance of said unlawful conspiracy, broke down the locked doors of plaintiff's factory, stoned its windows on four floors and thereupon forced their way into the factory premises, destroying office partitions, desks, typewriters, computing machines, over-turning files, scattering records, throwing finished hosiery about the floor and out the windows, and did likewise wreck and demolish the machinery and equipment on said premises; that in addition to the above, they set upon William Meyer, President of Apex Hosiery Company, and F. Elwood Struve, its general manager, and by physical force and violence severely injured both of the aforesaid persons, William Meyers receiving a swollen head, cuts, bruises and contusions of the body, and F. Elwood Struve receiving two broken ribs and other bodily harm; that in addition, defendant's members and/or those instigated by them set upon the employees of Apex Hosiery Company who were still on the factory premises and who were not members of the defendant union, severely injuring many of them, more

particularly two of said persons, necessitating their removal to a hospital in a serious condition; but to the contrary, it is averred that neither this defendant nor any agent or member thereof by and with its consent or by its instigation in any manner whatsoever, were responsible for any of the acts complained of, and it is further averred that no combination or conspiracy was entered into for the purpose of committing any of the acts complained of.

It is denied that immediately upon the completion of the said forcible entry and destruction of plaintiff's premises, defendants William Leader and other members of defendant union, in large numbers, approached William Meyers, plaintiff's President, in the demolished office of the Company and demanded that he, then and there, although in a dazed and injured condition, sign a closed union shop agreement. To the contrary, it is averred that this defendant gave no authorizations or instructions to any of its officers or members to act for and on its behalf in contacting or discussing with the said William Meyers matters relating to a contract with it, but this defendant, being informed, believes and therefore avers that the plaintiff through its agents, workmen or employees, did specifically request the defendant William Leader to come in and upon the premises of the plaintiff for the purpose of discussing the situation with the said William Meyers, and that the said William Leader came there as a result of this request and not as a result of any orders or instructions from this defendant.

11. It is denied that all the aforesaid wrongful

acts against the employees of plaintiff and against its plant and equipment and the resulting destruction and personal injuries hereinabove related, were carried out under the personal direction, supervision and observation of the defendant William Leader, as President of the Union, who was present at the time said attack took place; but to the contrary it is averred that neither William Leader nor any other officer or member of the defendant union was authorized, empowered or instructed to do, supervise or instigate any of the acts complained of, and that this defendant was not in any manner whatsoever involved in the perpetration of any of the acts complained of, either directly or indirectly.

12. It is denied that after the occurrences hereinabove complained of on May 6, 1937, defendants caused and permitted approximately 150 or more of their members to take and continuously retain exclusiv possession of plaintiff's premises through the medium of what is popularly know as a "sit-down", up to and including June 23, 1937, during which period defendants refused to permit plaintiff's employees who desired to work and who were not members of the union, to follow the usual and customary occupations and duties, and furthermore, refused to permit plaintiff's office employees to come upon the premises and keep and maintain the books and records of plaintiff, and that to this end defendants barred the doors to all officers and employees of the plaintiff, thereby refusing them access to their own plant and working premises, the defendants placing new locks and bolts on all entrances

to plaintiff's plant in order to carry out this purpose. To the contrary, it is averred that this defendant did not cause or permit approximately 150 or more of their members to retain exclusive possession of the plaintiff's premises. Such action, if committed, was not done by and with the consent, approval or instigation of this defendant. This defendant did not authorize or empower any person or persons to acts for or on its behalf in any of the matters related to in Paragraph 12 of the plaintiff's second amended sta ement of claim.

13. It is denied that the unlawful possession of the plaintiff's premises by the defendants continued from May 6, 1937 to June 23, 1937, the date on which the defendants and/or those whom they caused or directed to "sit-down" on plaintiff's premises vacated said premises, pursuant to an Order of the United States District Court for the Eastern District of Pennsylvania, as of March Term, 1937, No. 9741, entered June 22, 1937, commanding them so to do, and pursuant to the mandate of the United States Circuit Court of Appeals for the Third Circuit, entered June 21, 1937, as of March Term, 1937, No. 6479, in which the aforesaid persons in possession of plaintiff's premises were declared by said court to be "lawless individuals" who had "forced themselves upon and into the plaintiff's property" and thereafter "retained illegal possession of it"; but to the contrary, it is averred that neither the defendant nor any of its officers or agents were unlawful in possession of the plaintiff's premises as averred therein; but the defendant being informed,

believes and therefore avers that those occupying the premises of the plaintiff were former employees of the plaintiff, which action was taken by them as individuals and not for or on behalf of this defendant.

14. It is denied that as a result of the unlawful entry upon plaintiff's premises by the defendants and/or other persons acting for and under the direction of defendants, and the use of force and violence by them as aforesaid, defendants damaged plaintiff's factory premises and the merchandise, machinery and equipment therein located. To the contrary, it is averred that the unlawful entry was not by this defendant, its officers, agents or any of its members acting for and under the direction of the defendant; but as averred before, the defendant has been informed, believes and therefore avers that the said action, if any, was taken by persons who were unknown to the defendant at the aforesaid time.

This defendant is unable to reply in detail as to the other averments of Paragraph 14 relating to the items of damage. The said items are entirely within the personal knowledge and information of the plaintiff herein, and therefore this defendant cannot either admit or deny the averments as set forth; and if same becomes material, will demand at the time of the issue joined, strict proof of the various items as listed, and the fair and reasonable market values of same.

15. It is denied that between May 6, 1937, and June 23, 1937, during the aforesaid unlawful pos-

session of plaintiff's premises, by the defendants and such other persons as were acting for and under the direction of defendants, said persons did unlawfully damage and destroy plaintiff's factory premises and the equipment and merchandise therein; but to the contrary it is averred that neither the defendant nor any of its officers or agents, acting for and on behalf of the defendant, committed any unlawful act or acts or any of the damages as set forth in Paragraph 15.

Defendant has no knowledge or information as to any of the averments of items of damage set forth therein or by whom they were committed; that defendant is unable to obtain any information relevant thereto, as same is entirely within the exclusive knowledge of the plaintiff herein, and if the matter becomes material, demands strict proof thereof at the time of the issue joined, both as to the items of damage, and the fair and reasonable market value thereof.

16. The defendant denies that any of the damages and destruction of the plaintiff's property were due to the illegal acts of this defendant, and further denies that this defendant was in any manner or means responsible for the alleged loss and damage by the plaintiff, as more specifically set forth in Paragraph 16; that this defendant has been unable to ascertain the facts as averred in the various subheadings of Paragraph 16, as same are entirely within the knowledge of the plaintiff and not available to any investigation by this defendant.

Defendant being advised by counsel, believes and therefore avers that all of the allegations set forth in Paragraph 16 are of a speculative and indefinite nature, and not such as should be considered as an item of damage in this action, and for that purpose specifically denies each and every of the allegations, of Paragraph 16, as if denied in extenso herein. If deemed material to the issue when joined, this defendant requests strict proof of each and every of the allegations thereof.

17. Defendant denies that it unlawfully took possession of and damaged the plaintiff's premises, and further avers that the allegations in Paragraph 17 as to loss of orders for hosiery are uncertain and conjectural in nature, and are not proper items of damage in the instant case, and therefore denies same. If this item shall be material to the issue joined, the defendant being unable to obtain any information relative thereto, the same being entirely and exclusively within the knowledge of the plaintiff, demands strict proof thereof by the plaintiff.

18. Defendant avers that the plaintiff has been misinformed and therefore specifically denies that all of the aforesaid unlawful acts of force, intimidation, threats, violence, forcible entry, illegal possession, destruction of property and injury to persons, were authorized or participated in or ratified by the officers and individual defendants named in this amended complaint, and by the members of defendant's union. To the contrary, it is averred as stated above that this defendant did not authorize, participate in or ratify any act or acts complained of by

the plaintiff in its statement of claim, and that it did not authorize any of its officers or individual defendants named to act for and on its behalf, nor commit or ratify any such action by any of its officers or individual members to do or commit any act complained of in the statement of claim.

19. The plaintiff is misinformed, and defendant therefore denies that all of the aforesaid unlawful acts of force, intimidation, threats, violence, forcible entry, illegal possession, destruction of property, injury of persons and other acts hereinbefore related, in which the defendants unlawfully combined and conspired together, were entered into, perpetrated and carried out by defendants with the purpose and intent of unlawfully restraining or controlling plaintiff's supply of raw materials and finished merchandise entering and moving in interstate commerce, or of accomplishing an undue and unreasonable restraint of interstate commerce in the hosiery manufactured by plaintiff; but to the contrary it is averred that the defendants did not in any manner on its own behalf or through its officers or members, unlawfully combine and conspire together to commit the acts complained of for the purpose of restraining or controlling plaintiff's supply of raw materials and finished merchandise entering and moving in interstate commerce, and that the defendant, its agents or employees, did not by and with the consent of the defendant or with their approval, do any act or acts in an attempt or effort to restrain interstate commerce in the hosiery manufactured by plaintiff.

20. It is denied that this defendant did any act or acts as complained of in the plaintiff's statement of claim, and therefore did not commit any act constituting an unfair labor practice affecting, burdening or obstructing interstate commerce.

21. It is denied that the total damage sustained by the plaintiff because of the wrongful acts of this defendant as above related, amounts to $1,171,957.47, but to the contrary it is averred that this defendant is not in any manner whatsoever responsible for any of the complaints alleged in the plaintiff's statement of claim, and therefore not responsible for any of the damages and expenses complained of by the said plaintiff.

WHEREFORE, this defendant asks that this action be dismissed as against the American Federation of Full Fashioned Hosiery Workers (sometimes known as American Federation of Hosiery Workers), Philadelphia Branch No. 1, Local 706.

(sgd) HUEY BROWN.

BENJ. R. SIMONS,
Attorney for Defendant.

Sworn to and subscribed before me this 26 day of October, A. D., 1938.

DOROTHY BONX,
Notary Public.

(Seal)

My commission expires 3/9/39.

TESTIMONY

(Filed April 18, 1939)

Philadelphia, Pa., March 13, 1939

Before Hon. William H. Kirkpatrick, *J.*, and a Jury.

Present:

Sylvan H. Hirsch, Esq.,
Arno P. Mowitz, Esq.,
Sundheim, Folz & Sundheim, Esqs., representing the Plaintiff.

M. Herbert Syme, Esq.,
Benjamin R. Simons, Esq.,
Maurice Abrahams, Esq.,
Arthur V. Meigs, Esq.,
Syme and Simons, Esqs., representing the Defendants.

Jury impaneled and sworn or affirmed March 13, 1939.

THE COURT:

Well, now, gentlemen, we are ready in the Apex Hosiery matter. I think in this case it probably would be well to draw alternates as well as just the jurors, and I think the way to do it will be to draw eighteen first, and then draw four alternates afterwards, and when they

go over there have them sit separately so you will know which are which, and exercise your three challenges as to the eighteen, and each have one challenge as to the four alternates. That will leave you two alternates.

Now, if you will draw the panel and send them over to the other room we will go over there and you can strike them over there, and that will give us this room as quickly as possible.

(Eighteen jurors were called by the Clerk).

MR. LILLY:

That is eighteen, now.

THE COURT:

I think we might as well call four more, with the understanding that the alternate jurors are to be drawn from the last four called.

MR. HIRSCH:

That will give us each three strikes on the main jury?

THE COURT:

Three strikes on the main and one on the alternates.

(Four additional jurors were called by the Clerk).

THE COURT:

We will just move over there. Take all the witnesses, parties, jurors and everybody over there.

MR. HIRSCH:

Judge Kirkpatrick, there may be some challenges for cause by reason of rel[illegible]nship or

knowledge of the parties, or something like that, and before we exercise our peremptory challenges would it be advisable to challenge those persons for cause, and then have their places filled?

THE COURT:

Well, how do you want to challenge? Are you both agreed that they should be excused?

MR. HIRSCH:

I think so.

MR. SYME:

I don't know whether we would agree on the causes for which they would be excused, but—

THE COURT:

Well, what I mean is that if you are going to challenge for cause it will have to appear on the record what the cause is.

MR. SYME:

That is right.

THE COURT:

If you mutually agree that certain jurors shall be excused we can save that much time, that is all; whatever you want to do about it.

MR. HIRSCH:

I had primarily or preliminarily the question of knowledge of the attorneys in the case.

MR. SYME:

Well, I think there are other questions. For instance, I definitely would be opposed to jurors who are fundamentally opposed to organized labor or to unions.

THE COURT:

I can ask any general questions you want, but if preliminarily there are any jurors which you can agree should be excused for any reasons known to both of you, why, you can excuse them now and send over others.

MR. SYME:

Frankly, I don't know any of the jurors—

THE COURT:

All right.

MR. SYME:

And I don't know any objection, except, of course, for peremptory cause.

MR. HIRSCH:

Well, in fairness to Mr. Syme, I don't know the juror to whom I am referring, Mrs. Coyne, but my partner, Mr. Folz, is a friend of Mrs. Coyne, and I don't think Mrs. Coyne should sit.

THE COURT:

All right. Now, you both agree that Mrs. Coyne should be excused?

MR. SYME:

Of course.

THE COURT:

Very well. Send over another juror, then.

MR. HIRSCH:

Now, is there anyone else in this jury panel who is friendly with any of the attorneys in this case? This is Mr. Syme, and Mr. Simons, who represent the defendants, and I am Mr. Hirsch, who represents the Plaintiff; or are you

friendly or related to any of the defendants named in this case?

MR. SYME:

Or to the plaintiffs.

MR. HIRSCH:

Or to the plaintiffs in this case. The Apex Hosiery Company is the plaintiff.

THE COURT:

Well, I will ask the general questions if you want those asked.

MR. SYME:

I have prepared several general questions. I haven't shown them to Mr. Hirsch. I don't know whether he will object to them or not.

THE COURT:

All right, excuse Mrs. Coyne, and have another juror drawn in her place.

(Another juror was drawn.)

MR. HIRSCH:

Here are the questions. I don't think number two is a proper question. I don't know that number one is, either.

THE COURT:

Well, there is just a question whether you want the Court to ask those questions or not. I can put it in this way, Mr. Hirsch, I think it would be proper to ask the jurors whether they are opposed to organized labor to such an extent that they could not render a fair verdict in this case.

MR. HIRSCH:

I think that is a proper question.

MR. SYME:

That is all right.

THE COURT:

I don't think the second one is a question that bears on the competency of the jurors. If that question is objected to—

MR. HIRSCH:

That is objected to.

THE COURT:

—I will not ask that question.

MR. SYME:

All right. You don't object to three and four?

MR. HIRSCH:

Let me see those.

MR. SYME:

Three, four, five and six, rather, I should have said.

MR. HIRSCH:

Well, they would have to be enlarged.

MR. SYME:

Yes.

MR. HIRSCH:

I have no objection if those questions are enlarged so it is shown whether they have a fixed opinion which would prevent them from—

THE COURT:

Yes, I will take care of that.

MR. HIRSCH:

I would like you to ask about the relationship—

THE COURT:

Yes.

MR. HIRSCH:

—to the various parties, and so forth.

THE COURT:

Oh, I will. I will ask the general question.

Now, will you let me have the pleadings, please?

Now, members of the jury, the Court is going to address certain questions to you, and they are addressed to the whole panel, and I want anyone to answer them to whom they apply, and that includes the four alternate jurors as well. The plaintiff in this case is the Apex Hosiery Company. Are any of you ladies and gentlemen stockholders, officers or employees, or have you ever been, of the Apex Hosiery Company?

(No response.)

THE COURT:

The defendants in the case are William Leader, Joseph Burge, Harry Omeig, Huey Brown, the American Federation of Full Fashioned Hosiery Workers. Are any of you related to or acquainted with any of the individual defendants that I have named? Are any of you members of the organization, the American Federation of Full Fashioned Hosiery Workers, or have you ever been a member of that organization?

(No response.)

THE COURT:

Are any of you related to or personally acquainted with counsel on either side of this case?

(No response.)

THE COURT:

Now, the parties have asked me to address certain other questions to you. Are any of you opposed to organized labor to such an extent that you would not be able to render a verdict; a fair verdict, in a case in which a labor union is one of the defendants?

(No response.)

THE COURT:

Have any of you read about the Apex Hosiery case, read anything in the newspapers about it?

AN ALTERNATE:

I have some time ago.

THE COURT:

Has anyone else read anything about it in the newspapers?

A JUROR:

Yes.

THE COURT:

Now, then, the members of the jury who have read about the case, have any of you formed an opinion which would make it impossible for you to render a fair verdict on the evidence in a case arising out of the occurrences that were reported in the newspapers at the Apex Hosiery plant? Do any of you feel that you have an

opinion that would prevent you from rendering a fair verdict in the case?

(No response.)

THE COURT:

Have you formed any definite opinion from the facts you have heard or learned about the Apex case so that you are convinced in your own mind of the justice and responsibilities of the parties to this case? That doesn't mean much more than what I have said. You have no definite opinions?

(No response.)

THE COURT:

If the question of a sit-down strike were to be involved in the issue which you have to try would that prejudice you to such an extent that you could not render a fair verdict, in a case in which a labor union was a defendant?

(No response.)

THE COURT:

All right, any other questions that you want put to the panel, gentlemen?

A JUROR:

Your Honor, I am a member of the American Federation of Labor, but not the Full Fashioned Workers.

MR. SYME:

Your Honor, I would like you to ask this gentleman the question whether his membership in the American Federation of Labor would prejudice him against a C. I. O. union—

THE COURT:

Yes.

MR. SYME:

—which might happen to be a defendant in the case.

THE COURT:

I think that is a proper question. Would you feel by reason of your membership in the A. F. of L. that you could not render a fair verdict in a case in which the union involved was a C. I. O. union?

THE JUROR:

I don't think so. I think I can render a fair verdict.

THE COURT:

All right.

AN ALTERNATE:

I am a member of the American Federation of Labor.

THE COURT:

Well, have you any such feeling against a C. I. O. union that you feel you couldn't render a fair verdict in a case in which they were involved?

THE ALTERNATE:

No.

MR. HIRSCH:

May I ask you to ask the converse of that question, to both of these gentlemen, whether they as members of a labor union—

THE COURT:

Let me ask both of you gentlemen, from the other point of view, would the fact that you are members of labor unions so effect your views that you could not render a fair verdict, in favor of an employer and against a labor union?

THE ALTERNATE:

No.

THE COURT:

Very well. That is the only union that is a defendant, is that right?

MR. HIRSCH:

That is all.

THE COURT:

One more question addressed to all of you, whether you are members of labor unions or not, are you opposed to the C. I. O. organization to such an extent that it would prevent you from rendering a fair verdict in a case in which a C. I. O. union was a defendant?

(No response.)

THE COURT:

All right, what is the difficulty, gentlemen?

(Discussion at side bar.)

THE COURT:

Mr. Nagle; which is Mr. Nagle, of Reading?

MR. NAGLE:

Here.

THE COURT:

You are listed here as "Retired". What was your business, Mr. Nagle?

MR. NAGLE:
I am retired.

THE COURT:
What business were you in before?

MR. NAGLE:
I was in the radiator business.

THE COURT:
Radiator business?

MR. NAGLE:
Yes.

THE COURT:
You are not connected with the hosiery business in any way?

MR. NAGLE:
No.

THE COURT:
All right.

Mr. August A. Miller, which one is he?

MR. MILLER:
Here.

THE COURT:
You are listed as "Retired", Mr. Miller. What was your business?

MR. MILLER:
I was for many years with the Milk Producers Association as editor of their trade paper.

THE COURT:
Thank you, sir.

(The jury was sworn.)

THE COURT:

Well, we can recess for ten minutes and then we will get started.

(Recess at 11:30 o'clock A. M.)

THE COURT:

Well, I guess we are ready to proceed, gentlemen, aren't we?

(Mr. Hirsch stated the plaintiff's case to the jury.)

THE COURT:

Well, now, it is twenty minutes after twelve. Mr. Syme, I will permit the defendants either to make a statement now or to reserve your statement until you come to open your case, whichever you prefer.

MR. SYME:

It depends entirely upon Your Honor. I mean, I won't take as much time as Mr. Hirsch, there is no doubt of that.

THE COURT:

Well, you do whatever you please. You can either make your opening statement when you return—we are going to recess for lunch.

MR. SYME:

Oh, well, that is perfectly all right.

THE COURT:

You can either make it when you return, or if you prefer to reserve it until you come to your side of the case you may do it then.

MR. SYME:

Thank you.

THE COURT:

Just a minute. I want to say to the jury, now, you have been sworn in a case which, as you have observed, is somewhat out of the ordinary, and it is a case which has had some comment in the papers. I want to caution you not to talk to anybody about this case, and I wouldn't even talk it over, the facts of the case, with the members of your own families. Don't try to arrive at any conclusion about it until you have heard all the testimony. Don't permit anyone to talk to you about it. If any one talks to you about the case tell them you are a member of the jury and that you can't talk about it, and if they persist in talking to you after that you can bring it to my attention.

Be back here at two o'clock. We may have to sit a little longer hours in this case than ordinarily, but we will try to get along as rapidly as we can.

(Recess, 12:25 until 2 o'clock P. M.)

After Recess

Present: Counsel as before noted

THE COURT:

All right, gentlemen, we are ready. Do you wish to address the jury?

MR. SYME:

Yes, Your Honor.

THE COURT:

All right.

(Mr. Syme stated the defendants' case to the jury.)

(Mr. Syme made reference to the Danbury Hatters case and the way workers were dispossessed and made penniless.)

MR. HIRSCH:

Now, if Your Honor please,—

MR. SYME:

Your Honor, I didn't interrupt Mr. Hirsch,—

MR. HIRSCH:

Well, I must interrupt you.

MR. SYME:

—notwithstanding the fact that Mr. Hirsch made a lot of exaggerated statements, I sat there, held my chair, simply because I felt that Mr. Hirsch ought to get his opportunity to present his case as he intends to develop it to the jury.

MR. HIRSCH:

Now, if Your Honor please, I very patiently

listened, and thought that Mr. Syme would only refer to the Act as a legal question, but I am sure that the history of other cases and matters to which he now refers have no relevancy in this case. I am only asking Mr. Syme to limit his remarks to this case. I don't think this is the time for Mr. Syme to bring in a history of labor legislation and cases which are in no way connected with this case and can never form a part of this case from an evidentiary standpoint. I have no desire to cut Mr. Syme off from saying anything that pertains to this case.

THE COURT:

Well, I think that what you say is correct. Counsel should confine themselves to a statement in their opening address of what they expect to establish by the evidence. I think it is proper to call the jury's attention to the fact that this is a case brought under the Sherman Anti-Trust Act, but I do not think the question of what occurred in other cases under that Act is proper to be discussed at the present time, so counsel will confine himself to a statement of what he expects to show.

MR. SYME:

Thank you, Your Honor.

(Mr. Syme continued his address to the jury.)

THE COURT:

Go ahead.

MR. HIRSCH:

I call as my first witness Huey Brown, the secretary of the union, as for cross examination.

THE COURT:

Has daily copy been ordered of this testimony?

MR. HIRSCH:

I haven't ordered it, sir.

MR. SYME:

May I talk to the Judge for a minute?

ULYSSES G. BROWN, having been duly sworn, was examined and testified as follows:

(Discussion at side bar.)

THE COURT:

At the request of counsel, and not objected to by opposing counsel, the witness is instructed by the Court that he is not bound to answer any question which will tend to incriminate him in any way or render him liable to criminal prosecution under the Sherman Act or any other Act of Congress.

MR. HIRSCH:

Note that I call him as for cross examination.

THE COURT:

Yes.

Cross Examination

BY MR. HIRSCH:

Q. Mr. Brown, you are the secretary of the American Federation of Hosiery Workers, Philadelphia Branch No. 1, Local No. 706, are you not?

A. Yes.

Q. And as such you keep the minutes of the meetings of the executive board of that union and also of the general membership?

A. Yes.

Q. I am correct, am I not, in saying that the executive board is a board composed of between one hundred and one hundred and sixty members, who are elected from the membership in the union, that is, from the various plants whose employees are members of your union?

A. No, that is not so.

Q. What is the fact? How is the executive board made up?

BY THE COURT:

Q. Would you mind telling, before we start, how many members of the union are there, or were there in May of 1937, approximately?

A. Roughly, between ten and twelve thousand.

Q. In Philadelphia?

A. Yes.

Q. Now, will you tell us how many of the members of the executive board there were and how they were elected?

A. At that time?

Q. At that time, yes, that is what we are interested in.

A. There was probably about one hundred and

fifteen or so at that time, and they were elected from shops.

BY MR. HIRSCH:

Q. That is, each shop elected so many directors or members of the executive board, depending upon the number of employees in that particular shop?

A. That is right.

Q. And how often did the executive board meet?

A. Weekly.

Q. And it was likewise called the executive committee, was it not? There wasn't an executive board and an executive committee, was there?

A. Possibly both names were used.

Q. But there was only one group of persons, that is what I mean,—

A. Yes.

Q. —irrespective of the name?

A. That is right.

Q. And the general membership met twice a month, did it not, during 1937?

A. That is right.

THE COURT:

What do you mean, the board?

MR. HIRSCH:

General membership, the members.

THE COURT:

Of the union or the board?

MR. HIRSCH:

Of the union.

BY THE COURT:

Q. How often did the board meet?

A. Weekly.

BY MR. HIRSCH:

Q. Now, then, you kept the minutes of these weekly meetings of the executive board, did you not?

A. That is right.

Q. And in those minutes you noted matters that transpired and took place at those meetings of any importanee?

A. That is right.

Q. You were subpoenaed to be in court today by the plaintiff, and you were asked to produce all of the minute books of your union, were you not?

A. Yes.

Q. Do you have those, Mr. Brown?

A. They are in counsel's hands at the present time.

MR. HIRSCH:

Will counsel produce them?

MR. SIMONS:

May I say to the Court, Your Honor, our understanding was that Mr. Hirsch, who gave me a copy of the subpoena, would tell me what books you wanted. I didn't know that he wanted them today, and I didn't bring them with me. Now, if there is anything in particular that Mr. Hirsch wants from the minutes we have made certain extracts of matters, and for the purpose of saving the time of the Court and the jury we might be able to agree to the particular matters he is referring to.

BY MR. HIRSCH:

Q. I show you an excerpt from the minutes of a meeting of the executive board of your Branch 1 held on April 13, 1937, which has been approved by your counsel, and ask whether or not that was a minute which you placed in the minutes of your association at the time the meeting was held. Will you take a look, please?

(The witness examined the paper.)

A. Just the marked places you want me to—

BY MR. HIRSCH:

Q. The two places that have been marked; first, the minute of April 13, 1937.

A. If this is a copy of the minutes of my minute book this is probably—this is probably in there, but I couldn't say—

THE COURT:

Well, I think your counsel—

A. —from my memory—

THE COURT:

—agrees—

MR. HIRSCH:

Your counsel agrees—

MR. SYME:

We will agree to that, that that is in the minute book.

MR. HIRSCH:

And likewise for May 4th, will you agree that is in the minute book?

MR. SYME:

Which one is that? Yes, we will agree to that.

MR. HIRSCH:

May I offer in evidence, then, or read into the record the two minutes which I consider pertinent to the case?

THE COURT:

All right.

MR. HIRSCH:

That of April 13, 1937 being a minute noted at the regular meeting of the executive board of the union, which was noted in the minute book as follows: Moved and seconded that the President of the Branch have the power to call such strikes in open shops as he sees fit. Carried.

BY MR. HIRSCH:

Q. The president of the branch is William Leader, and was on that date, was he not?

A. That is right.

MR. HIRSCH:

I also read into evidence a minute of May 4th, 1937, from the minutes of the regular meeting of the executive board of Branch 1, which reads as follows: Moved and seconded that President Leader be given power to call a strike in the Apex shop whenever he sees fit. Carried.

BY MR. HIRSCH:

Q. Mr. Brown, you were present at the Apex mill on May 6, 1937, were you not?

A. May I refuse to answer that, on the first instructions?

THE COURT:

Yes, well, that is for you to say. If you think that that question will incriminate you you have the right to refuse to answer it, and we will have to determine then whether it is such a question. You will have to determine in the first instance whether you think the answer to the question will incriminate you. If you think so you can decline to answer on that ground. Then the Court will have to determine whether your position is correctly taken or not.

THE WITNESS:

Well, I will decline to answer on those grounds, then.

BY MR. HIRSCH:

Q. Do you recall that prior to trial depositions were taken of the various officers of your union in my offices pursuant to the rules of court permitting us to do this, and that you testified?

A. To that effect?

Q. No, just—

THE COURT:

No, just that you did testify.

THE WITNESS:

Yes.

BY MR. HIRSCH:

Q. —that you testified.

MR. HIRSCH:

In accordance with the rules of court I now offer in evidence the question and answer of this witness at that time. Since he is a party to this action I have the right under Rule 26 (d) (2) to offer his deposition in evidence. I only offer the question and answer. I will not read it until I have shown it to counsel for the defendants, so that if he objects to it—it would be unfair for me to read it to the jury and then have them hear it, without going into evidence.

THE COURT:

Yes.

(The testimony was shown to Mr. Syme.)

MR. HIRSCH:

Page 12; I want the question and answer to go into the record. 26 (d) (2), Judge Kirkpatrick.

MR. SYME:

Your Honor, I think that 26 (d) (2) should be read in conjunction with (d), Use of Depositions:

> "At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence . . . ."

in other words, the depositions are taken and then if Mr. Hirsch's construction is going to be used we might as well get the depositions in here and we are through with the case. The only thing that happens in the depositions is,

the depositions are taken, subject to objections to be raised in court, and to be determined by the Court at the hearing. Now, certainly you cannot now produce this deposition and say, "Well, here is the deposition, I am going to produce it." It is subject to the rules of evidence and subject to objection to be determined by the Court.

THE COURT:

Did the witness claim the privilege at the time the depositions were taken?

MR. HIRSCH:

He did not, sir, and in order that my position may be clear, I do not contend that the defendant may not object to the admission of depositions on the ground of relevancy or competency, because the rules specifically provide that that objection may be made. I don't want to be misunderstood.

MR. SYME:

I think that Mr. Hirsch's answer to that is a little bit inaccurate, also. I would much rather discuss it with Your Honor at bar, where we can show the depositions and exactly what happened.

THE COURT:

Be very glad to have you do it.

(Discussion at side bar.)

THE COURT:

I will permit this question to be asked, and direct the witness to answer this question, and

that is as far as we go at the present time. I beg your pardon; I will permit the deposition be read as to this one question and answer.

MR. HIRSCH:

"Q. Were you present at the Apex mill on May 6th, 1937?

A. Yes."

And I would like the deposition to note, no objection to that particular question and answer by counsel for the defendants.

BY MR. HIRSCH:

Q. You were employed in the Co-Ed Hosiery Company, were you not,—

A. That is correct.

Q. —on May 6th, 1937?

A. That is correct.

Q. And it is a fact that on that day all of the employees of the Co-Ed Hosiery Company left the plant and went down to the Apex mill in order to demonstrate or picket, is that correct?

A. To my knowledge, I don't know who left the Co-Ed plant at that date.

Q. Do you have any knowledge as to whether or not your shop committee in that plant went to the management and asked for permission to go down to the Apex mill for the purpose of demonstrating or picketing?

A. I do not.

Q. Did you work at all that day at Co-Ed?

A. I worked in the morning.

Q. You didn't work in the afternoon?

A. No.

Q. Don't you know as a fact that the other members of the Co-Ed plant didn't work that afternoon, but went down to the Apex Hosiery Company?

A. I don't know as a fact.

Q. You don't?

THE COURT:
Is this May 6th?

MR. HIRSCH:
May 6th,—

THE COURT:
All right.

MR. HIRSCH:
—1937.

BY MR. HIRSCH:

Q. Who is the superintendent of Co-Ed? His name is Milleston, is it not?

A. I don't believe there is any superintendent.

Q. Who is Mr. Milleston, M-i-l-l-e-s-t-o-n?

A. I really couldn't give you his real job in the shop.

MR. HIRSCH:
Mr. Milleston, will you stand up, please?

MR. MILESTONE:
Mr. Milestone.

MR. HIRSCH:
Milestone, I am sorry.

BY MR. HIRSCH:

Q. Do you recognize that gentleman?

A. Absolutely.

Q. He is at the Co-Ed Hosiery Company, is he not?

A. Absolutely.

Q. And what is his position?

A. He works in the office, and I would give him—my own personal opinion would be general manager of the office.

Q. Now, the minutes of the general membership were also kept by you, were they not?

A. That is right.

MR. HIRSCH:

That is all at the moment, reserving the right, if Your Honor please, to recall this witness if it becomes necessary—

THE COURT:

All right.

MR. HIRSCH:

—at a later time. Mr. Milestone.

JACK L. MILESTONE, having been duly sworn, was examined and testified as follows:

Direct Examination

BY MR. HIRSCH:

Q. Mr. Milestone, with whom are you connected in business?

A. Co-Ed Knitting Mills.

Q. Is that the company by whom Mr. Huey Brown is employed?

A. Yes, sir.

Q. What is his position there?

A. Huey Brown is a footer.

Q. He works on a footing machine?

A. Correct.

Q. And what is your position with that company?

A. Secretary.

Q. Do you recall the date of May 6th, 1937, when there was some trouble down at the Apex Hosiery Company?

A. I remember the date of May 6th, sir.

Q. In so far as your plant was concerned on that day did you have any requests of an unusual nature from your employees?

A. We had a—

Q. If so, by whom?

A. We had a request by committee to be permitted to go off at two-thirty.

Q. Now, you have what is known as a union mill?

A. Yes, sir.

Q. And when you speak of a committee you refer to a committee of your employees?

A. Committee of the employees.

Q. Is that what is known under a union agreement as a shop committee?

A. That is termed a shop committee.

Q. And did the committee advise you the nature or reason for their request?

A. They said that they wanted to have off to go down—

MR. SIMONS:

I object to that, if Your Honor please. There

has been no identification as to this committee. There has been no proof that they had anything to do—that they are the defendants in this case or had any connection with the defendants in this case,—

MR. HIRSCH:

If Your Honor please,—

MR. SIMONS:

—or were authorized by the defendants in this case.

MR. HIRSCH:

If Your Honor please, we will prove who the committee was, but it has been shown that this is a union mill. Therefore, these committee members were members of this union, and I think it is perfectly proper as members of the union, which is one of the defendants in this case, to testify to what was said on that occasion.

MR. SYME:

Your Honor, a union committee is in no position to bind a union. I mean, Mr. Hirsch knows that very well. It is very doubtful whether, as an unincorporated association, under the Norris-LaGuardia Act, whether an officer of the union under certain circumstances is able to bind it, but, certainly, a shop committee is frequently reversed by the union and is in no position to bind the union, its membership or its officers, and in any event, Mr. Hirsch should lay the basis; I mean, if it is, let him lay the basis for showing the fact that

the committee is able to bind them, and we will have an opportunity to disprove that.

THE COURT:

Well, the case cannot be proved all at one time, and the Court will overrule the objection. Of course, a motion to strike out may be made if it appears that those persons had nothing to do with the union and were not in any position that the union would be in any way responsible for what they did.

MR. SYME:

Your Honor will allow us an exception?

THE COURT:

Yes. You can save a lot of time, gentlemen, you don't need any exceptions any more, under the new rules.

MR. SYME:

Thank you.

THE COURT:

Every ruling I make is subject to review without exception.

BY MR. HIRSCH:

Q. Who were the members of that committee?

A. I don't recall, sir.

Q. And what function does the shop committee have in your plant? What relationship do they bear between your management and the union?

A. Between—will you ask the question again, please?

BY THE COURT:

Q. What relation—

BY MR. HIRSCH:

Q. What is the function of the shop committee?

A. The shop committee and management iron out all individual differences in the shop that they are able to.

Q. Matters that concern the employees in the shop are discussed by management with whom?

A. With the shop committee.

Q. And is this the same committee that came to you on May 6th and asked you to permit the employees of your mill to get off at 2:30?

A. The shop committee.

Q. And did they state the purpose for which they desired these employees to leave?

A. They asked to be excused at 2:30, or 2 o'clock, I don't remember when, for the purpose of going down to the Apex mill.

Q. And what did you reply?

A. The permission was not granted.

Q. And what happened?

A. At 2:30 the shop did go out.

Q. How many?

A. About one hundred and twenty-five.

Q. And how many did you have in the shop at that time?

A. Approximately one hundred and twenty-five.

Q. You are here today under subpoena are you not?

A. Yes, sir.

Cross Examination

BY MR. SYME:

Q. Mr. Milestone, your shop committee is elected from the employees in your shop, isn't that right?

A. I imagine they are, yes, sir.

Q. Yes, I mean,—

A. Yes.

Q. —they all consist of your employees?

A. Correct, sir.

Q. There are no outsiders?

A. Correct, sir.

Q. Now, in the negotiation of grievances or disputes—or, rather, in the negotiation of an agreement with you does the shop committee participate?

A. The officers participate, not the shop committee.

Q. Right, in other words, the officers of the union are distinct and apart from the shop committee, is that right?

A. Correct, sir.

Q. Right. In the negotiation of shop difficulties it frequently occurs, doesn't it, that you negotiate with the shop committee and the union officer will come in and reverse the shop committee?

A. Correct, sir.

Q. Right, and you recognize the shop committee as merely representing your employees, but not representing the union?

A. Correct.

Q. Right. Now, then, tell me, Mr. Milestone, did the union request you at any time on May 6th to let your employees go out?

A. No, sir.

Q. Did anybody on behalf of the union ask you to let your employees out on May 6th?

A. No, sir.

MR. SYME:

That is all.

Redirect Examination

BY MR. HIRSCH:

Q. And when matters relating to shop management are taken up by whom are they taken up first with the management?

A. The management is taken up—the management takes it with the shop committee.

Q. And if the management and shop committee agree on the matter is there any necessity for the union to come in?

A. If there is an agreement with the shop committee and management on matters pertaining to the shop it generally ends there.

Q. How long have you had a union agreement?

MR. SYME:
Your Honor, I object to that.

MR. HIRSCH:
I will withdraw that question.

MR. SYME:
It is entirely immaterial to the issue.

THE COURT:
It is withdrawn.

MR. HIRSCH:
It is withdrawn.

BY MR. HIRSCH:

Q. Now, then, in so far as stoppage of work is concerned for reasons which you have just given, or for other reasons, with whom in the past have you discussed such stoppages?

MR. SYME:

Your Honor, I object to that. Again, it is immaterial, and there is no evidence that there were such stoppages in the past.

THE COURT:

I will overrule the objection. It is proper to show the course of conduct and ordinary practice in order to determine the scope of the functions of the shop committee, if they are relevant.

THE WITNESS:

Question, please?

MR. HIRSCH:

Repeat the question, Mr. Rodebaugh, please.

(The question was repeated by the Reporter, as follows:

"Q. Now, then, in so far as stoppage of work is concerned for reasons which you have just given, or for other reasons, with whom in the past have you discussed such stoppages?")

A. Requests for stoppages are asked by the committee.

BY MR. HIRSCH:

Q. The shop committee?

A. By the shop committee.

MR. HIRSCH:

That is all.

Recross Examination

BY MR. SYME:

Q. Mr. Milestone, have there been other requests for stoppages?

A. Yes, sir.

Q. When?

A. There have been requests made for stoppages, a number of cases, by the union.

Q. What was the purpose of those stoppages, do you remember?

A. No, sir.

Q. You don't remember?

A. No, sir.

Q. The requests you say in the other cases were by the union?

A. Yes, sir.

Q. I see, but this request did not come from the union, but from the shop committee?

A. Correct.

Q. Then apparently you were mistaken when you said that requests for stoppages ordinarily come from the shop committee? Requests for stoppages ordinarily come from the union, but in this particular case they come from the shop committee, isn't that right?

A. Requests for stoppages have come both from the union and the committee.

Q. Do they ordinarily come from the union or from the committee?

A. Ordinarily requests for stoppages come from the union.

Q. That is right, and in this case it didn't come from the union?

A. No, sir.

Q. It came from the shop committee, is that right?

A. Correct.

Q. Now, when you say factory matters—let me ask you, when you negotiate on wages do you negotiate with the shop committee?

A. Negotiate with a separate committee specifically picked for that purpose.

Q. On wages?

A. On wages.

Q. Union representatives?

A. Yes, sir.

Q. Right; not shop committee?

A. No, sir.

Q. Right; hours the same thing?

A. Correct, sir.

Q. General standards, arbitration, and the contract?

A. Correct, sir.

Q. Right, shop committee has nothing to do with the union except grievances in the shop?

A. Internal.

Q. And even that is subject to reversal by the union, isn't that right?

A. Yes.

MR. SYME:

That is all.

MR. HIRSCH:

That is all, Mr. Milestone. Mr. Wienhold.

FRITZ WIENHOLD, having been duly sworn, was examined and testified as follows:

MR. SYME:

Your Honor, before the next witness, will you entertain my motion to strike all of the testimony of Mr. Milestone in so far as it has not at all been associated or connected in any way with the union?

MR. HIRSCH:

If Your Honor please,—

THE COURT:

Well, I will deny the motion.

MR. HIRSCH:

All right.

Direct Examination

BY MR. HIRSCH:

Q. Mr. Wienhold, with what Hosiery firm are you connected?

A. Quaker Hosiery Company.

Q. You will have to keep your voice up so everyone here can hear you.

MR. HIRSCH:

And if there is any lady or gentleman in the jury who cannot hear the witness, if you will raise your hands we will have the answer repeated.

THE WITNESS:

Quaker Hosiery.

BY MR. HIRSCH:

Q. And in what capacity are you employed there?

A. Foreman.

Q. Do you recall the date of May 6th, 1937?

A. Yes, sir.

THE COURT:

May I ask counsel whether they can agree as a fact that there is only one union of hosiery workers in Philadelphia? Is that correct?

MR. SYME:

We will agree to that, Your Honor.

THE COURT:

So agreed?

MR. SYME:

Yes.

THE COURT:

And when you talk about the union, you refer to the American Federation of Full Fashioned Hosiery Workers?

MR. SYME:

Branch No. 1.

THE COURT:

Branch No. 1.

MR. HIRSCH:

What was the last question, Mr. Rodebaugh?

(The testimony was repeated by the Reporter, as follows:

"Q. Do you recall the date of May 6th, 1937?

"A. Yes, sir.")

BY MR. HIRSCH:

Q. How many employees did you have on that day?

A. Between three hundred and three hundred and fifty.

Q. And your concern was what was known as a union shop?

A. Yes, sir.

Q. Now, what happened on that day so far as the working of your employees in the afternoon was concerned?

A. Committee came to me and asked off.

Q. What committee?

A. The shop committee.

Q. Yes, and what did they ask you?

A. They asked off for May 6th to go up to the Apex, picketing.

Q. Just so that everyone understood you, they asked to be off May 6th to go up to the Apex to picket?

A. Picketing.

Q. When did they come to you, what time on May 6th?

A. That was in the morning.

Q. And what time did they say they wanted to get off?

A. I don't recall that. I think it was before lunch.

Q. And what did you say?

A. I told them I had to take it up with the management first.

Q. And after you took it up with the management what did you tell them?

A. The management didn't approve of it, taking off.

Q. Did not approve?

A. Not approve.

MR. SYME:

Your Honor, my objection, of course, goes to this witness, all of the testimony he has given.

THE COURT:

So understood, yes.

BY MR. HIRSCH:

Q. And did they take off?

A. Yes, they took off.

Cross Examination

BY MR. SYME:

Q. The shop committee—

BY THE COURT:

Q. You say they took off; is that your employees?

A. The employees.

Q. All of them?

A. All of them.

THE COURT:

All right.

BY MR. SYME:

Q. Mr. Wienhold, did the union ask you to let your employees off?

A. The committee.

Q. The committee. The committee has nothing to do with the union, does it?

A. Well,—

Q. Well, you might explain to us a little bit further. The union has a president, isn't that right, and a vice-president,—

A. Right.

Q. —and a secretary and a treasurer? You know all of those people, you know Bill Leader and at that

time it was Joe Burge and Huey Brown and Harry Omeig, you know all of them, don't you?

A. Yes.

Q. All right. Now, this shop committee doesn't consist of officers of the union, does it?

A. No.

Q. It doesn't represent the union, does it? It represents your employees, doesn't it?

A. Right.

Q. Right. If you had a request from the union office it would be made either by Bill Leader, or Joe Burge, or one of those people, it wouldn't be made by your shop committee, is that right?

A. Right.

Q. Right. This request then did not come from the union, did it?

A. Came from the committee.

Q. That is right.

A. Shop committee.

Q. Shop committee.

MR. SYME:

That is all.

MR. HIRSCH:

That is all, Mr. Wienhold, thank you. Mr. Friedland.

JOSEPH FRIEDLAND, having been duly sworn, was examined and testified as follows:

MR. SYME:

Your Honor, for the purposes of the record, I make the same motion to strike with respect to the previous witness.

THE COURT:
Same ruling.

Direct Examination

BY MR. HIRSCH:

Q. Mr. Friedland, with what concern are you connected, and in what capacity?

A. With the Courtland division of the Gotham Silk Hosiery Company, as factory manager.

Q. And how many employees did you have on May 6, 1937?

A. How many employees that day?

Q. Yes.

A. I venture to say about four hundred and fifty.

Q. And your mill on that day was what was known as a union mill, you had an agreement with the defendant union?

A. That is right.

Q. And all the members of your mill, the employees, were members of this union, as far as you knew?

A. As far as I knew.

Q. And did your employees work on the afternoon of May 6th, 1937?

A. Part of the afternoon, yes.

Q. Until what time?

A. About 2:30.

Q. And what was it that happened on that day of an unusual nature which caused them to stop work at 2:30?

A. I don't understand that question.

BY THE COURT:

Q. Well, tell us anything you know about the

circumstances of their stopping work. How did they happen to stop?

A. The committee approached me—

BY MR. HIRSCH:

Q. What committee?

A. The shop committee approached me some time during the day and asked permission to stop at 2:30. Permission was not granted, of course.

Q. Did they indicate to you the purpose for which they desired to stop work?

A. Yes.

Q. What did they say?

A. Picketing the Apex plant.

Q. Now, permission was not granted?

A. No.

Q. Did they in fact stop work?

A. They stopped off the time that they have asked, the time that they asked to stop off.

Q. Even though permission was not granted, is that correct?

A. That is correct.

Q. And did the entire shop empty out at that time?

A. No.

Q. How many went?

A. I would say about two hundred and fifty to three hundred.

Q. The question of stoppage of work at 2:30 in the afternoon instead of the usual hour, we will say, of four o'clock, would that be a question which you in the past would take up with the union, or the union would take up with you through its officers, or would that be a question which would be taken up with management through your shop committee.

A. I don't think I had had that experience before.

Q. And with relation to other matters pertaining to working conditions at the plant, time of arriving, and time of departing, or other such matters, with whom would you discuss those affairs if there was to be a change in schedule of just for a day, say?

A. With the shop committee.

MR. HIRSCH:

That is all. Cross examine.

Cross Examination

BY MR. SYME:

Q. You understand the shop committee also not to be part of the union, I mean, in the sense that they represent the union and bind the union,—

A. That is right.

Q. —isn't that so?

A. That is right.

Q. Shop committee represents your employees, is that right?

A. That is right.

Q. You have two shifts in your plant, don't you?

A. Yes, sir.

Q. What time does one of the shifts go off?

A. At 3:30.

Q. 3:30, so that when your employees asked you to go off at 2:30, all they were asking for was an hour off, isn't that right?

A. That is right.

Q. Sure, in other words, ordinarily they would be off at 3:30, but they asked you to be off at 2:30?

A. That is right.

Q. That is right. How long has your plant been a union mill?

MR. HIRSCH:

That is the question which Mr. Syme objected to when I asked it of the other witness.

MR. SYME:

All right, I withdraw it.

MR. HIRSCH:

I have no objections to the question. I just wanted to point that out.

MR. SYME:

Perfectly all right, Mr. Hirsch.

MR. HIRSCH:

You may answer the question.

MR. SYME:

The question is withdrawn. It is withdrawn, don't bother.

BY MR. SYME:

Q. And you say that about two hundred and fifty left and the others did not, is that right?

A. I was asked the question—

Q. Yes.

A. —whether everyone left, and I said no.

MR. SYME:

Now, that is all. Your Honor, for the purpose again of the record, all of the three mills mentioned so far, I think Mr. Hirsch will agree with me, are located in Philadelphia. I mean, there is no mill outside of Philadelphia.

THE COURT:
All right.

Redirect Examination

BY MR. HIRSCH:
Q. How far is the Courtland mill from the Apex mill?
A. Four or five blocks.

MR. HIRSCH:
Thank you, that is all.

Are there any other mill owners or representative here that were subpoenaed?

BY MR. HIRSCH:
Q. One further question for the record; you were subpoenaed, Mr. Friedland?
A. Yes, sir.

MR. SYME:
I make the same motion, Your Honor, for the record.

THE COURT:
Same ruling.

MR. HIRSCH:
We have other witnesses of a similar nature, and they will be in when I call them.

THE COURT:
All right.

MR. SYME:
If counsel wants to stipulate with respect to that I have no objection.

MR. HIRSCH:

Well, that would be helpful. That would save some time. I would like to stipulate that.

THE COURT:

It is stipulated that if called the following witnesses would testify to the following facts—

MR. HIRSCH:

Yes; that Albert Weber, of the Cambria Hosiery Company, Charles Franko, of the Interstate Hosiery Company, and Harry Burch, of the Retailers Hosiery Company, have been subpoenaed, and if they testified they would testify similarly, in effect and content, to the testimony of the three witnesses who have just finished on the witness stand, the numbers of their employees ranging from one to three hundred, if I am not misinformed. I mean, I am not quite sure of that, although I don't think that is terribly important, whether it was one hundred, two hundred or three hundred in each shop.

THE COURT:

What was that?

MR. HIRSCH:

The number of employees range from one to three hundred. Maybe you have the figures, and I will accept your figures.

MR. LEADER:

Which Interstate do you mean?

MR. HIRSCH:

Langhorne or Lansdale.

MR. LEADER:

It isn't in our Branch. Just so you are not

confused, are you speaking of the Hosiery Retailers?

MR. SYME:

They are part of the Interstate?

MR. LEADER:

Yes.

MR. HIRSCH:

How many members?

MR. LEADER:

I judge about one hundred and fifty.

MR. HIRSCH:

One hundred and fifty, and how many with Weber?

MR. LEADER:

Approximately about one hundred and eighty-five.

MR. HIRSCH:

Well, will you note that of record: one hundred and fifty at the Hosiery Retailers, and one hundred and eighty-five at Weber.

THE COURT:

That is agreed, is it, Mr. Syme?

MR. SYME:

Yes.

THE COURT:

All right, subject to your objection.

MR. SYME:

That is right, with respect to the whole testimony.

THE COURT:
Yes.

WILLIAM MEYER, having been duly sworn, was examined and testified as follows:

Direct Examination

BY MR. HIRSCH:

Q. Mr. Meyer, will you keep your voice up so that Judge Kirkpatrick, on the one side, and the ladies and gentlemen of the jury, on the other, may hear you? What is your position with the Apex Hosiery Company?

A. President.

Q. And for how many years have you been president of this company?

A. Since 1922.

Q. And for how many years have you been connected with the company?

A. Since 1908.

Q. And when was the company founded, and by whom?

A. By my father, in 1900.

Q. And it has been located in Philadelphia since 1900?

A. Yes.

Q. Your plant is located at Fifth and Luzerne Streets, is it not?

A. That is right.

Q. And what is the particular type of business which you conduct?

A. Ladies silk full fashioned hosiery.

Q. You make nothing but ladies full fashioned hosiery, is that correct?

A. That is right?

Q. And how many persons did you employ on May 6th, 1937?

A. Approximately twenty-five hundred.

Q. And with relation to the size of other mills in the City of Philadelphia how does yours compare?

A. At least twice as large.

Q. And with reference or relation to the size of other hosiery mills in the United States, how does yours compare?

A. The second or third place, I just don't know.

Q. And how many hosiery mills are there in the United States, as far as you know?

A. Three hundred—full fashioned hosiery mills?

Q. Full fashioned hosiery, making what you make.

A. Why, I would say over three hundred.

Q. And you are either second or third in size?

A. Yes.

Q. In 1937 what was your average weekly payroll, in round figures, if you recall?

A. It will run between—it will run between sixty-five and seventy thousand dollars a week.

Q. Between sixty-five and seventy thousand dollars per week, and what was the average monthly production—

MR. SYME:

I object to that, if Your Honor please. Your Honor,—

MR. HIRSCH:

I haven't finished the question yet.

MR. SYME:

Oh, I am sorry. I thought you had.

BY MR. HIRSCH:

Q. —in 1937, prior to May 6th, that is, the first four months of the year of 1937, in dozens, average monthly production.

MR. SYME:

I object—

A. That was about one hundred—

MR. SYME:

—to that.

A. —thousand dozen—

THE COURT:

Wait a minute. When counsel objects, don't answer.

THE WITNESS:

Excuse me.

MR. SYME:

We are getting into a very important question, the question of production, and the question of per cent of production with respect to Interstate Commerce, and I think we are perfectly justified in asking that exact figures rather than approximate figures or average figures be produced here. The company has its books. Let them produce the exact records, prove those records, and that will be perfectly all right, rather than merely giving approximations and averages.

MR. HIRSCH:

I think the position of Mr. Syme is a proper one, and I am prepared to prove what he asks.

BY MR. HIRSCH:

Q. At my request did you have prepared for you in order that you could testify here today the quantity of your production and shipments during the first four months of the year of 1937,—

A. Yes, sir.

Q. —preceding the date of May 6th, 1937?

A. Yes.

MR. SIMONS:

If Your Honor please, may I at this time object to merely the offer of a statement which was prepared from the books and records? I feel that the matter is entirely too important to simply take a transcript of records for several months and pass them off for that. The issue involved here goes much deeper.

THE COURT:

Well, haven't the books been available to you at any time?

MR. SIMONS:

They have been—

MR. HIRSCH:

All these figures have been checked.

THE COURT:

Have they been checked?

MR. HIRSCH:

Yes, sir.

MR. SIMONS:

I don't know what figures he has there. We have checked some figures.

THE COURT:

Well, look at them and see whether you are satisfied they are correct.

MR. SIMONS:

Well, I don't have the books here, if Your Honor please. You see, I don't know. I didn't know what procedure Mr. Sylvan Hirsch was going to take in the presentation of his case. Unfortunately, this happens to be March 13th, and the accountants are rather busy at this time of the year.

THE COURT:

Well, it is all right. All I want to avoid is waste of time, and if you really are satisfied these figures are correct there isn't much use of dragging the books in.

MR. SIMONS:

If Your Honor please, the purpose for that is this. Here we have one, two, three, four, five months—

THE COURT:

Yes.

MR. SIMONS:

—of one year taken. I don't think on the basis of that alone Your Honor will decide the question of their position with regard to Interstate Commerce. I think you would want to have a comparison of greater magnitude than merely those few months.

THE COURT:

Well, I don't know.

MR. HIRSCH:

If Your Honor please,—

THE COURT:

You can get a pretty good idea from five months' production.

BY THE COURT:

Q. Is there anything unusual or exceptional about the five months prior to May, 1937 in the matter of the amount of production? Was it unusually large or unusually small—

A. Well, that—

Q. —during those months?

A. That is our full production, when we operate full time.

Q. That was full-time production?

A. Yes, sir.

Q. And you were operating full time?

A. Yes, sir.

THE COURT:

Well, that covers it.

MR. HIRSCH:

Well, now, if Your Honor please, at this moment I am merely trying to show general figures. When it comes time on the question of loss of profits and business I will have all the books here and give the specific details.

THE COURT:

No, that is all right, I will permit it with the understanding that the books will be available to the defendants, and that if there is any

error about these figures they can raise the question after they look at the books. I am going to accept it as prima facie correct on the statement that counsel make that they have been checked and that they were taken from the books; and in addition to that, he is the president of the company and he knows pretty well, within pretty narrow limits, what his production is, so that I will overrule the objection.

MR. SIMONS:

May we have an opportunity if we deem it necessary to recall Mr. Meyer at a later time—

THE COURT:

Yes, surely. Oh, yes.

MR. SIMONS:

—to cross examine him on this particular issue?

THE COURT:

Yes, indeed.

MR. SIMONS:

Thank you.

THE COURT:

He will be available for cross examination on this.

BY MR. HIRSCH:

Q. Now, looking at this record which I show you, and which was prepared in order that you might have the information at hand, and with leave to the defendants to check the information at any time, will you tell us what the approximate—first, tell us what your production was during the months of January, February, March, April and up to May 6th, and what your shipments were during that time.

A. Well, the January production was 93,375 dozen.

Q. And your shipments for that month?

A. The shipments was 58,626 dozen.

In February it was 92,894 dozen. The shipments were 92,497 dozens.

In March the production was 100,789, and shipments was 113,965 dozens.

In April it was 100,000; the production was 100,715, and the shipments was 129,089 dozens, pairs of stockings.

In May it was 15,026 dozen, and the shipments were 11,056.

Q. The May production and shipments were all prior to May 6th, 1937?

A. Yes, sir.

Q. Now, tell us, of the shipments to which you have just referred for the months of January, February, March, April and May of 1937, and with reference to the shipments that your concern made in previous years, what percentage of those shipments were shipped to points outside of the State of Pennsylvania.

MR. SIMONS:

If Your Honor please, that is also subject to the same objection.

MR. HIRSCH:

Yes, subject to check.

MR. SIMONS:

And may I ask this? On the examination that we have been permitted to make of the books and records we have not been able to check that particular factor because of the fact, and I think

possibly Mr. Hirsch was correct in saying we have no right to know who the customers are of the Apex, and we are not interested in that particular phase of it, as a result of which we have not been able to ascertain with any degree of definiteness the amount of interstate business done by the Apex Hosiery Company, and I think that is something that will have to be done in order to be able to check with some degree of certainty the question of the amount.

THE COURT:

Well, I don't see why they shouldn't check—

MR. HIRSCH:

I have no objection, sir, on this point for Your Honor to do what was done in our examination of the accounts and books,—

THE COURT:

Yes.

MR. HIRSCH:

—appoint some third party to make the check.

THE COURT:

It can all be done. If you want it done you have to move promptly, because we won't delay the trial for that report.

MR. SIMONS:

May we ask, if it meets with Your Honor's approval, that Mr. Bachman be appointed to check that?

THE COURT:

Oh, yes, he is the Master generally to supervise the whole thing.

MR. HIRSCH:

We won't have any trouble on that.

THE COURT:

You take it up with him.

MR. SIMONS:

You can tell him it is with your authority to proceed.

THE COURT:

Oh, yes.

MR. HIRSCH:

And with our approval.

MR. SIMONS:

Right.

BY MR. HIRSCH:

Q. Now, will you give us the approximate percentage of shipments to points outside of the State of Pennsylvania?

A. The percentage runs about eighty, eighty-five per cent.

Q. So that between eighty and eighty-five per cent of the shipments of your business is in interstate—

A. That is right.

Q. —commerce?

A. That is right.

Q. Do you have any sales offices outside of the City of Philadelphia, and if so, where?

A. New York City.

Q. And where else do you have selling representatives or offices?

A. In Chicago and in New Orleans.

Q. The New York office is maintained by the company?

A. Yes.

Q. And the Chicago and New Orleans branches are representative branches?

A. That is right.

Q. Now, with reference to unionization, will you tell us what type of shop you ran prior to May 6th, 1937? By that I mean, was it what was known as an open shop, with no union contract, or an open shop with a union contract, or a closed shop with a union contract?

A. It was an open shop.

Q. And at that time you had no contract with the union?

A. That is correct.

Q. Prior to May 6th, 1937, what, if any, conditions did you impose on your employees in so far as their continued employment by you was concerned of their membership in any union?

A. No conditions.

Q. Did you ever make it a condition of their employment that they must not join a union, and, particularly, not the defendant union?

A. No.

Q. Did you ever in any way prior to May 6th, 1937, interfere, directly or indirectly, with the free exercise by your employees of their right to join or not join a union?

A. Never interfered.

Q. Prior to May 6, 1937, had you dealt collectively with your employees, and individually?

A. Yes.

Q. On what questions?

A. On general shop conditions, hours and wages and general conditions.

Q. Now, with reference to wages—strike that question. In May of 1937, and prior to that date—

MR. HIRSCH:

If Mr. Syme will permit me to lead I think we will save some time here.

BY MR. HIRSCH:

Q. —there were two associations in Philadelphia; one was the association of manufacturers who had no contract with the union, and the other was the association of manufacturers who had a contract with the union, is that correct?

A. That is correct.

Q. You were connected with the association which did not have a contract with the union?

A. That is correct.

Q. And with reference to the beginning of 1937 how many members of your association—which I will call for purposes of letting the jury know what I mean "open shop" or "non-union shop" association, how many members did you have, how many plants?

A. Oh, about—around a hundred.

Q. And how many in Philadelphia?

MR. SYME:

Just one minute. Your Honor, may I have an offer of proof from Mr. Hirsch, what he is leading up to, I mean, with respect to these two associations? Obviously, it has no relevancy to the case unless Mr. Hirsch has in mind tying it up with something else—

MR. HIRSCH:

I certainly do.

MR. SYME:

—in the future.

MR. HIRSCH:

I have in mind, sir, tying this up directly with the conferences that were held by the union representatives with this non-union association prior to May 6th, at which time the non-union group of manufacturers agreed to sign an agreement with this union similar to the one that was signed in Reading, but not similar to the one that they demanded in Philadelphia. I think it has relevancy on the bona fides of the management in this case.

MR. SYME:

Then I definitely object to it because of the fact that no conferences were at any time held with the representatives of this union.

MR. HIRSCH:

In that case that will be a matter of defense.

MR. SYME:

I think that is very important—oh, no,—

THE COURT:

I don't think the bona fides of this management really is in issue. The question is, as I understand it, how far the union authorized or is responsible for certain damage that occurred to the plaintiff company, and I don't see how we can form any intelligent opinion about that unless we know pretty broadly the general conditions that led up to this controversy and the events of May 6th, and I think that it is proper to go into the whole situation rather broadly. It is very hard to say where to put the limit, but I will permit this question, this matter, to be gone into.

MR. SYME:

But, Your Honor,—

THE COURT:

It may have a bearing. It is only for the purpose of determining how far the union—what part the union took in the events of May 6th, and that necessarily involves a rather wide inquiry into the circumstances leading up to it.

MR. SYME:

I have no objection, Your Honor, to the broadest latitude being given to anything in which the union participated, but I think there should be a line of demarcation drawn—

THE COURT:

Yes, but—

MR. SYME:

—between Branch 1, that is a party to this suit, and the American Federation of Hosiery Workers, which is the national organization, which is not a party to this suit.

THE COURT:

Well, I am going to try to keep that line of demarcation in mind, but I can't draw it too sharply here. The jury will be able to sift it out.

MR. SYME:

Well, Your Honor, these negotiations, however, were conducted not with Branch 1, that is my objection. In other words, if the basis will be laid to show that Branch 1 had anything to do with it, any association with it, by all means, let us have it, but if there was a conference at the Bellevue-Stratford Hotel, where

there was a question of a Reading agreement, with which Branch 1 has absolutely nothing to do, and there was a general conference of manufacturers, that is outside of the orbit, outside of the purview, of the jurisdiction of Branch 1, I say that it is obviously irrelevant and won't serve any purpose being introduced here.

MR. HIRSCH:

Well, unless we can show that some representative of Branch 1 was at that meeting I am going to agree with Mr. Syme, and if my information is incorrect and there was no representative of Branch 1, I will join with him in having this stricken from the record.

MR. SYME:

The mere presence of a representative of Branch 1 doesn't mean that Branch 1 conducted the negotiations.

THE COURT:

Well, now, gentlemen, I will receive the evidence offered.

MR. HIRSCH:

What was the question, Mr. Rodebaugh?

THE COURT:

He started in to say that there were two associations, and he wanted to know how many members in Philadelphia there were of the open shop association.

THE WITNESS:

I would have to sort of approximate that,—

THE COURT:

Yes, I understand.

THE WITNESS:

—because I—

THE COURT:

Well, surely, we won't hold you to the—

THE WITNESS:

I would say there must have been about—Philadelphia and hereby—about forty.

BY THE COURT:

Q. And how many altogether?

A. About a hundred in the association.

Q. And how many were there in the closed shop association?

A. At that time I figure about, around thirty.

Q. In Philadelphia?

A. That is approximate, too—no, of all over.

BY MR. HIRSCH:

Q. How many in Philadelphia, if you know, approximately?

A. Well, I would say in Philadelphia about a dozen.

THE COURT:

All right.

THE WITNESS:

A few more, maybe.

BY MR. HIRSCH:

Q. So that in numbers, the great number of shops in Philadelphia at that time were open shops—

A. That is—

Q. —or non-union shops?

A. That is correct.

Q. Now, then, prior to May 6th did you have

any conference with union representatives at which an officer, a representative of this defendant union, the local Branch 1 of Philadelphia, was present?

A. Yes.

Q. Who was present from this union?

A. Mr. Leader.

Q. The president of the union?

A. Yes, sir.

Q. And where was that conference held?

A. The Bellevue-Stratford.

Q. And what was the general nature of the conference?

A. To negotiate an open shop agreement similar to the Reading agreement.

Q. There had been an agreement signed up in Reading with the branch up there, had there not?

A. Well, I don't know, I couldn't say whether just at that time, but it was in the making at that time.

BY THE COURT:

Q. A closed shop or open shop?

A. Open shop agreement.

BY MR. HIRSCH:

Q. And in order that the members of the jury may understand what you mean by an open shop agreement, I am correct, am I not, in saying that that is an agreement under which you recognize this union as the bargaining agency for whatever members it may have in your shop, but there is no provision in the agreement that all of the members in your shop must become a member of the union in order to work there?

A. That is correct.

MR. SYME:

Your Honor, I object to this. This is misleading the jury, obviously. Here sits Mr. Meyer, who testifies with respect to a Reading agreement. The Reading agreement is not here. There were provisions in the Reading agreement—

THE COURT:

Well, let's not talk about the Reading agreement.

MR. SYME:

—with respect to membership—

THE COURT:

Let's strike out reference to the Reading agreement.

BY THE COURT:

Q. There was a conference at the Bellevue-Stratford at which Mr. Leader was present, as I understand the testimony, at which time there was discussion about negotiating an open shop agreement with the union. Is that correct?

A. That is correct.

THE COURT:

Well, let's let it go at that.

BY MR. HIRSCH:

Q. At that time—

THE COURT:

I will strike out reference to the Reading agreement. We don't want to go too far afield.

MR. HIRSCH:
I don't desire to, sir.

THE COURT:
All right.

BY MR. HIRSCH:

Q. At that time what, if anything, was said by the representatives of the management and the mill owners who were there in reference to signing any kind of an agreement with this union?

A. Why, it was the general discussion to get together on such an agreement as an open shop agreement.

Q. Were you at that time, representing the Apex Hosiery Company, willing to sign an open shop agreement?

A. Yes.

Q. And will you fix the date, approximately? It was prior to May 6th; do you know the month?

A. I think it was the early part of April or around the end of March, somewheres around in there. I think it was the end of—the latter part of March.

Q. Now, then, did you ever receive a direct request from the defendant union to sign up a closed shop agreement?

A. I received a letter along about the middle of April in which an agreement was enclosed and signed by William Leader, the president, and requesting that he felt that I would want to sign such an agreement as the enclosed agreement, and that he would call on me with a committee to discuss it at a later date.

Q. I show you a typewritten copy of a letter which was sent to the Brooks and Anderson Hosiery

Company. If I recall correctly, you have lost the original of the letter you received from the union, to which you have just referred?

A. That is correct.

Q. And Mr. Syme has consented to my using this letter as being similar in wording and content to the letter which you received. Now, will you look at this letter and tell us whether or not that is correct?

(Copy of letter dated March 4, 1937, from William Leader, President, Full Fashioned Hosiery Workers Local 706, Branch No. 1, to the Brooks and Anderson Hosiery Company, was shown to the witness.)

A. Yes, that is correct.

THE COURT:

Let me see it.

MR. HIRSCH:

I offer this letter in evidence as Plaintiff's Exhibit 1, and will read it to the jury.

THE COURT:

What is the date of it?

BY MR. HIRSCH:

Q. Well, the date of the letter, Mr. Meyer, do you recall that?

A. About the middle of April.

THE COURT:

Oh, yes, all right.

MR. HIRSCH:

Ladies and gentlemen, this is a copy of a

form letter sent to another manufacturer, but the content is what we are interested in and not whether it was sent to someone else. It reads as follows:

"Dear Sir:

Enclosed you will find a copy of an Agreement which we expect you to sign. I would like you to read this over very carefully feeling sure it will meet with your approval.

I will be in touch with you shortly and would like to arrange a meeting with you and a Committee in your shop where the formal signing can take place.

Awaiting an early reply, I remain

Very truly yours,"

Signed, William Leader, President, Full Fashioned Hosiery Workers, Local 706, Branch No. 1.

(A copy of Exhibit P-1 follows:

Exhibit P-1—Copy of Letter

"Full Fashioned Hosiery Workers Union of Philadelphia and Vicinity

William Leader, President — Alex. Kellenbenz, 1st Vice Pres.

Branch No. 1, A. F. of H. W. Affiliated With American Federation of Labor as Local 706, U. T. W. of A.

Meeting Rooms and Offices, 2530 N. Fourth Street, Philadelphia, March 4, 1937

Mr. Brooks
Brooks & Anderson Hos Co
Jasper and Orleans Street
Philadelphia Penna

Dear Sir:

Enclosed you will find a copy of an Agreement which we expect you to sign. I would like you to read this over very carefully feeling sure it will meet with your approval.

I will be in touch with you shortly and would like to arrange a meeting with you and a Committee in your shop where the formal signing can take place.

Awaiting an early reply, I remain

Very truly yours,

(Signed) Wm. Leader,
President.

wl; mc
bstau
18049

Full Fashioned Hosiery Workers Local 706, Branch No. 1")

BY MR. HIRSCH:

Q. Had you prior to the receipt of this letter ever had any discussion with Mr. Leader or any other representative of the union about the terms of the agreement which they wanted you to sign?

A. No.

Q. And did you from the date this letter was received until May 6th, 1937, ever have a conference with any representative of the union with regard to the terms and conditions of the agreement which they wanted you to sign?

A. No.

BY THE COURT:

Q. Was that agreement enclosed in the letter?

A. Yes, sir.

BY MR. HIRSCH:

Q. The agreement which was enclosed was a closed shop agreement, was it not?

A. Yes, that is correct.

Q. And between the date that that letter was received and May 6th did you ever have a telephone or direct personal request from Mr. Leader or any other representative of this union for a conference?

A. No.

Q. Now, prior to May 6th, 1937, Mr. Meyer, had any complaint ever been filed by your employees with either the State or the National Labor Board that you would not deal with them—

A. No.

Q. —or recognize them, or that—or had any complaint ever been filed by this union that you refused to deal with them, or were practicing unfair labor practices?

A. Never.

Q. And prior to May 6th, 1937 did this union ever make any request of you or file any petition with either the State or National Labor Board asking for an election in your shop?

A. No, never did.

Q. Now, with reference to the general working conditions in your plant prior to and on May 6th, 1937, are you familiar with the rates of pay that were then in existence in the City of Philadelphia and elsewhere?

A. Yes.

Q. In so far as your rates of pay were concerned how did they compare with the rates prevailing in other mills making a similar type product, on May 6th, 1937?

A. They were—

MR. SIMONS:

I object to that, if Your Honor please. I mean, I don't think he has laid the foundation as yet.

THE COURT:

Well, not only that, but I don't think the merits of the controversy, if there was a controversy between Apex and the union, are at all important except so far as they may have a bearing on the participation of the union in these acts that are charged. Now, generally speaking, I think the witness can be permitted to say that there was no controversy—if this is a fact, Mr. Meyer, was it?— that there was no controversy existing between you and the union, or between you and your employees, about anything before May 6th, with the exception of the letter which you received, and the matter of open or closed shop.

BY THE COURT:

Q. Is that a correct statement?

A. That is correct.

Q. There was no other matter in controversy at all between either you and the union or you and your employees?

A. That is right.

Q. There was a controversy about open or closed shop; at least, it was under discussion?

A. That is right.
Q. That is correct.

MR. SIMONS:

Well, if Your Honor please, I think the testimony goes a bit further than that.

THE COURT:

Well, I—

MR. SIMONS:

There had never been any discussion of anything, and the main objective, or the object of the disagreements, apparently, was an open or closed shop. Nothing else was discussed—

THE COURT:

Well, that is all right, I think it is all right the way it is, and I think that covers the ground. I don't think we need go into the merit of the wage scale.

MR. HIRSCH:

That is satisfactory. That is all I wanted to show,—

THE COURT:

Yes.

MR. HIRSCH:

—and you have shown it. You have shown it much better than I was—I mean, much simpler, exactly what I was trying to show, there was no controversy between this—

THE COURT:

That is what he said. Well, I think we might recess for ten minutes.

(Recess at 3:20 o'clock P. M.)

WILLIAM MEYER, resumed.

Direct Examination (Continued)

THE COURT:

Go ahead, gentlemen.

BY MR. HIRSCH:

Q. Mr. Meyer, directing your mind now to the date of May 6th, 1937, and to the several days immediately preceding that date, did you notice anything unusual take place prior to May 6th, 1937 outside of your premises?

A. Yes.

Q. And what was that?

A. Why, the number of people gathering there during the day.

Q. And what else did you notice?

A. Noticed that they were molesting our people coming and going from their work.

Q. Keep your voice up.

A. Molesting our people coming and going.

Q. And who was molesting them?

A. Outside people.

Q. And what were they doing or endeavoring to do?

A. Well, they were stopping them, talking to them. From reports that I got they were—

MR. SIMONS:

I object, if Your Honor please, to questions of reports.

THE COURT:

All right, don't tell the reports; what you noticed yourself.

THE WITNESS:

I noticed that there were quite a few people gathering on the outside of the plant, and they were stopping our people as they came to and from the factory.

THE COURT:

Yes.

BY MR. HIRSCH:

Q. Now, coming down to the date of May 6th, what was the first information you had that there was a large gathering of persons around your mill?

A. I was called on the telephone, I was out of town, and was told—

Q. As a result of the phone call did you come back?

A. I came back, yes.

Q. What time did you reach the mill?

A. About 2:15.

Q. And when you reached the mill at 2:15 on May 6th what was the condition of affairs outside?

A. Well, there was several thousands of people around the factory then, when I got in, about 2:15.

BY THE COURT:

Q. Was your plant working at that time?

A. No, I had given instructions to close down the plant.

Q. And your employees weren't in the plant?

A. No, with the exception of the office force, the maintenance crew, the watchmen; about sixty, all told.

BY MR. HIRSCH:

Q. And when you came into the plant what next happened? Did you have any contact with any of the union representatives, and if so, through whom?

A. Through Inspector La Rue. He came into the office and said—

Q. He was what, a police inspector?

A. Yes.

Q. And what time would you say this was, as far as you can recollect?

A. Oh, I judge that was about—after half past two, some time, maybe twenty-five minutes of three, in along there, somewhere.

Q. Meanwhile did you notice what was happening on the outside?

A. The crowds were getting larger and larger all the time.

Q. And what happened when La Rue saw you?

A. La Rue said that he was acting as messenger boy for Mr. Leader, and Mr. Leader wanted to know whether I would see him, or something to that effect.

Q. And what did you say to Mr. La Rue by way of reply?

A. I said no, that I—

Q. Keep your voice up.

A. I said no, that I couldn't see Mr. Leader, but I would be willing to see Mr. Leader at my attorney's office.

Q. And why didn't you see him at that time?

A. Because the condition around the mill looked too alarming to me to sit down to try to talk to anybody.

Q. Now, when next did you either see or hear

Mr. William Leader, the president of this union, and where?

A. I heard somebody pounding on the front door, and I was about fifteen or twenty foot away from the front door, there was a partition in between there, but it is open at the top, and heard somebody say, "I now declare a strike and a sit-down", and with that then the barrage of bricks and stones and everything come through, and forced us out of the office into the wareroom, which is right behind the office, and then it didn't take any time before the stones started coming along the windows along Fifth Street. I noticed people battering down with iron bars and clubs, smashing the windows and the frames, and the first thing I know I saw a couple of fellows being bodily tossed in, that landed right on the floor, and, of course, I saw them pretty well bruised up, and then by that time somebody informed me, said that they are coming through the office, so I went down to the office again and tried to get in there, and by that time the mob had came through the office, was breaking up the partitions and throwing typewriters, adding machines and filing cabinets and desks and everything that was in the office was upside down, and in trying to stop these people, by holding up my hand, I was hit by a stone which turned me around, and the first thing I knew I was hit by a good square size ink well on my—right in back of the neck, which, of course caused me to just sort of be faint there for a minute, until I got my senses together, but by that time the crowd was still pushing on and they forced me out through the office, through the wareroom, out into the yard.

I closed the door between the shop-yard and the factory, and, of course, that didn't amount to anything, because they broke all the glass out of the door, and then backed me up against the wall, and, of course, the language they used wasn't fit to print, what they were going to do to me, and then I said then, finally I said, "For God's sake, isn't there anybody around that can stop this condition?", and somebody says, "Go get Bill Leader".

Q. And did they get Bill Leader?

A. Yes, they got Bill Leader.

Q. How soon was it that he came in,—

A. Oh, I don't think—

Q. —from the time they said "Get Bill Leader"?

A. I don't think it was five or ten—about ten minutes, at the outside. The moment Mr. Leader came in there everything quieted down. In fact, some of them started to try to clean up around there, that is, get the rubbish out of the way, that you could at least walk around through the office.

Q. And then what happened?

A. Mr. Leader said that he was going to get a committee and he would see me shortly, and I think about fifteen or twenty minutes elapsed from that time, he came in with what was a committee, Mr. Syme was there with him at the same time, and came into my back office, and they said to me, "Now, are you ready to sign this agreement?", and I said, "No, I will not, not under this condition."

Q. Now,—

A. And I also told Mr. Leader, I said, "Didn't you get my message from La Rue?", and Mr. Leader never really answered me that question, whether he had gotten it or whether he had not, I don't know.

Q. Now, when he said, "Now, will you sign this agreement?", had the office been damaged and laid waste?

A. Yes, sir.

Q. And what about the crowd on the premises?

A. Oh, the people were just going in and out and around like droves.

Q. At that moment?

A. When Mr. Leader was in the office?

Q. Yes.

A. They were still coming in and out, yes, oh, yes.

Q. I show you a photograph and ask if this correctly depicts the scene inside the offices of your company—

THE COURT:
What is that, marked P-2?

MR. HIRSCH:
It will be, sir.

THE COURT:
All right.

BY MR. HIRSCH:

Q. —after the crowd had done its work, as you recall it.

(The witness examined the photograph.)

A. Yes, but this is just part of it.

THE COURT:
Let me see it, please.

THE WITNESS:

It was worse than that.

MR. SYME:

Your Honor, I object to the introduction of the photographs unless they have been properly proved and the proper basis has been laid for their introduction in evidence.

MR. HIRSCH:

Under the rules of evidence, Judge Kirkpatrick, if the person can say that photograph correctly depicts the condition as he saw it, he need not be the photographer who made it.

THE COURT:

Oh, I will admit the photograph on the basis of the witness's testimony.

MR. HIRSCH:

I offer that as Plaintiff's Exhibit number 2.

(A photograph was marked Exhibit P-2.)

BY MR. HIRSCH:

Q. I show you another photograph which purports to be the inside of your offices, and ask you whether or not this correctly depicts the physical condition of the office as shown in the picture as you saw it after the crowd had done its work.

(The witness examined the photograph.)

A. Yes.

MR. HIRSCH:

I offer that in evidence as Plaintiff's Exhibit number 3.

(A photograph was marked Exhibit P-3.)

BY MR. HIRSCH:

Q. I show you another photograph of the inside of the office and ask you if that correctly depicts the condition of the office at that point.

(The witness examined the photograph.)

A. Yes.

BY MR. HIRSCH:

Q. As you saw it?

A. Yes.

MR. HIRSCH:

I offer that as Plaintiff's Exhibit number 4.

(A photograph was marked Exhibit P-4.)

BY MR. HIRSCH:

Q. I show you a photograph and ask you if this is an exterior view of your factory from the Fifth Street side.

(The witness examined the photograph.)

A. Yes, that is our factory.

MR. HIRSCH:

Plaintiff's Exhibit number 5.

(A photograph was marked Exhibit P-5.)

THE COURT:

What are these things hanging out the windows?

MR. HIRSCH:

Well, we will show that through another witness. They were the blankets of the sit-down strikers.

THE COURT:

Oh.

MR. HIRSCH:

This is merely presented to show the physical property itself.

THE COURT:

Go ahead.

MR. HIRSCH:

Plaintiff's Exhibit number 5.

BY MR. HIRSCH:

Q. Are you able to form an estimate as to the number of persons that were outside your mill at the height of the occurrence, after they had gathered?

A. I would say about twelve thousand people.

THE COURT:

Do you want to show the jury those pictures now?

MR. HIRSCH:

Yes, I would like to pass them out to the jury.

(The photographs were shown to the jury.)

BY MR. HIRSCH:

Q. Did you have occasion to look outside and see the crowd that was milling about?

A. Yes, sir.

Q. I show you a photograph and ask you whether or not this shows a crowd of persons at the one corner of your mill similar to the crowd which you looked upon outside of your mill at this particular point.

(The witness examined the photograph.)

A. Yes.

BY THE COURT:

Q. Is that a photograph of the crowd you saw?

A. That is—that is of the amount of people I saw from the office, yes, at the corner of Fifth and Luzerne, yes, sir, and all the way up Fifth Street there were still more. This only shows part of it. It was that dense.

MR. HIRSCH:

Plaintiff's Exhibit 6; I offer it.

(A photograph was marked Exhibit P-6.)

BY THE COURT:

Q. Well, can you say whether that is a photograph of the crowd on the 6th of May?

A. Yes, I would, yes.

BY MR. HIRSCH:

Q. Now, this photograph shows the crowd at the corner of Fifth and Luzerne Street?

A. Yes, sir.

Q. Where else were the crowd gathered, as far as you could see?

A. Why, they were gathered all along Fifth Street, down towards the south and up to the north of Fifth Street, and along through Luzerne Street, up east of Luzerne Street, and also west—I mean of Fifth Street, and also west of Fifth Street.

Q. And when you say they were gathered on Fifth Street along the side of your building, how long is your factory on Fifth Street?

A. I don't know the exact feet.

Q. Well, I mean with reference to a city block, how long is it?

A. Oh, I would say it is over half of a city block.

Q. And the crowd was all along that length?

A. Yes, and more.

(The photograph was shown to the jury.)

BY MR. HIRSCH:

Q. I show you a photograph—strike that question. The cars run on Fifth Street, do they not?

A. Yes, sir.

Q. They don't run on Luzerne Street?

A. No.

Q. First, tell me where that photograph was taken with reference to Fifth street on Luzerne Street, on which street.

A. That was taken on Fifth Street, and just a little this side of Luzerne.

Q. Now, does that photograph represent the scene as you saw it from the office prior to the time the crowd broke in?

A. That is the density of the crowd, yes.

MR. HIRSCH:

Plaintiff's Exhibit 7.

(A photograph was marked Exhibit P-7, and shown to the jury.)

BY MR. HIRSCH:

Q. As a result of your injuries was it necessary for you to consult a doctor?

A. Yes, sir.

Q. Now, after the crowd broke into your plant what did you see the police do to stop them inside?

A. There were no police inside, the police came in after, after I was talking with Mr. Leader and Mr. Syme. When I came out from the office then, that was the first time I saw police inside the establishment.

MR. SYME:

Your Honor, I have no objection to Mr. Hirsch having testimony with respect to the police, but in the interest of conserving time I don't see what relevancy it has to our present case. It might have had some relevancy under the injunction, in order to satisfy one of the provisions of the Norris-LaGuardia Act. I can't see what relevancy it has here at all.

THE COURT:

Well, it is—

MR. HIRSCH:

Well, it is relevant for one reason only, sir, I think the jury could very well ask themselves in their own mind, if this crowd was there, what were the police doing, to test the credibility of Mr. Meyer.

THE COURT:

Well, we needn't go into it fully, but it is all

part of the occurrences of that day. We can't draw the line too sharply. I will permit it.

BY MR. HIRSCH:

Q. Did you see the police make any arrests?

A. No.

Q. And when you left the building that day what time was it?

A. Around six o'clock, shortly before six.

Q. Were there any people outside at that time?

A. Yes.

Q. How many?

A. Oh, not so many. I would say there were several thousand around at that time, but nowhere near like there had been around three and four, between three and four o'clock.

BY THE COURT:

Q. You left at 6:15?

A. No, shortly before six, about five minutes of six.

BY MR. HIRSCH:

Q. Now, after the crowd broke in on May 6th, 1937 what happened with reference to the possession of your plant? Could you thereafter exercise the same right of property and possession, and the right to go in and out and operate your business as before?

A. No.

Q. Why not?

A. I got in there the next morning about eight o'clock, to stay for a very short time. I don't think I was in the plant more than a half an hour, because the plant—they were running through the plant from top to bottom, everything was in a very

destroyed condition, the office was all destroyed, and everything was laying around, and the people were just running in and out and up through the floors, and everything, it was absolutely impossible to do anything, so I left.

Q. And after that date who was in possession of your plant?

A. The sit-downers.

Q. What was necessary to be done in order to force the sit-downers to evacuate your property?

A. We instructed the attorneys to file a bill in equity in this Court here.

Q. And as a final result of that legal action after appeal to the Circuit Court of Appeals this Court entered the decree ousting the sit-downers?

A. That is correct.

MR. HIRSCH:

May I ask Mr. Syme to agree of record that a bill in equity was filed for an injunction some time in May?

THE COURT:

Oh, we take judicial notice of that. The jury can be told that, yes.

MR. HIRSCH:

And that the Circuit Court of Appeals filed their opinion on June 21, 1937, and on June 22nd, 1937, Your Honor signed an order commanding the sit-downers to evacuate the property.

THE COURT:

What were the dates?

MR. HIRSCH:

June 21st was the opinion, and on June 22nd I submitted an order to Your Honor commanding the sit-downers to evacuate the property. May I just make those statements of record? I don't think it is necessary for me to put in evidence the order.

THE COURT:

No.

MR. SYME:

Except, Your Honor, I mean, my consent is not necessary except this, that while the story is being told, let the complete story be told, that this Court at first refused to entertain jurisdiction of the bill in equity—

MR. HIRSCH:

On a question purely of law,—

MR. SYME:

That is right.

MR. HIRSCH:

—and not on a question of fact.

MR. SYME:

That is right.

THE COURT:

Well, yes, the jury might as well understand the situation. The bill in equity was first filed in the District Court. At that time I was of the opinion that this Court had no jurisdiction because it had not been shown that there was the intent to restrain interstate commerce involved in this occurrence of this sit-down

strike. Appeal was taken from that, and the Circuit Court reversed my finding upon that matter, and held that there was evidence in the record from which it appeared that there was the intention to violate the Sherman Act and restrain interstate commerce. The case was sent back to this Court with instructions to issue the injunction, and that is what was done on the 22nd of June.

MR. SYME:

Your Honor, don't you think—I don't want to be persistent,—

THE COURT:

That is all right.

MR. SYME:

—don't you think we ought to tell the jury at the same time the matter then went to the United States Supreme Court on that matter, and the United States Supreme Court reversed—

MR. HIRSCH:

No, sir, that is an unfair statement of Mr. Syme.

MR. SYME:

Let me finish.

MR. HIRSCH:

They reversed it because it was moot.

THE COURT:

Well, gentlemen, we are going to sooner or later come to the question of what the order of the Supreme Court meant,—

MR. SYME:

That is right.

THE COURT:

—but I don't think it is necessary to go into that now with the jury. As far as we have gone I think it is all right for the jury to take my general statement. It is a fact that there was an appeal taken to the Supreme Court of the United States, and that the Supreme Court made an order in which they said substantially that the decree of the Circuit Court of Appeals was reversed, but the case was remanded to the District Court then with instructions to vacate the injunction on the ground that the cause was moot, because the strike had been settled at that time,—

MR. SYME:

That is right.

THE COURT:

—and there was no further controversy between the parties. Now, just what the effect of that was on the law and on the matter of jurisdiction has not yet been determined by this Court, but we will have to consider it, possibly, some time.

That is just a general statement so you will understand what we are talking about, when we talk about the order of this Court and the opinion of the Circuit Court of Appeals, and so on.

BY MR. HIRSCH:

Q. Now, as a result of the order of this Court on

June 22nd, 1937 the sit-downers evacuated your property on June 23rd, did they not?

A. That is correct.

Q. When did you finally sign an agreement with this union, on what date, do you recall?

A. July 29th.

Q. 1937?

A. Yes.

MR. HIRSCH:

Does Your Honor think that a copy of the agreement would help the jury in this controversy in any way?

THE COURT:

I don't think so.

MR. HIRSCH:

I think I will withhold it for the moment, and if it becomes pertinent I will offer it at a later time.

BY THE COURT:

Q. You signed an agreement with the union?

A. Yes, sir.

Q. Who executed that agreement for the union?

MR. HIRSCH:

Let me read it—

A. I think it is on there.

MR. HIRSCH:

—from the agreement.

THE COURT:

Don't read the whole thing.

MR. HIRSCH:

No, just who signed.

THE WITNESS:

There are several signatures on there.

MR. HIRSCH:

William Leader as president of the American Federation—

MR. SYME:

Branch 1.

MR. HIRSCH:

—of Hosiery Workers, Philadelphia Local Branch 1, Local 706.

THE COURT:

All right.

THE WITNESS:

Are there other signatures on there?

MR. HIRSCH:

Also, I would like the record to note that Emil Rieve signed it as president of the American Federation of Hosiery Workers, which is the national organization, and William Meyer signed it as president of the Apex Hosiery Company. It was witnessed by a number of other persons. That is not of moment.

BY MR. HIRSCH:

Q. Now, just generally speaking of this agreement which you signed on July 29th, did that provide for your immediate installation of a closed shop?

A. No.

Q. After the sit-downers evacuated the property

were you able to resume your manufacturing operations immediately?

A. No.

Q. What was the general condition of the property, without being specific at this time, because there will be other witnesses who will have a closer knowledge?

A. There was a substantial number of machines absolutely destroyed which had to be rebuilt and replaced, parts fixed up, other machinery that was standing there deteriorated and had to be gone over and put in shape, in fact, all the machinery and equipment had to be gone over, and the plant had to be put back in shape for working conditions.

Q. During the period of May 6th, 1937 until June 23rd, 1937, when the sit-downers evacuated the property, were you ever able to send in machinists to keep the machines in good order and repair?

A. No, sir.

Q. Why not?

A. I have made several requests through counsel to get that request granted, but I understand through my attorneys that they were refused by the union and they wouldn't allow any of my people in there to take care of the machinery and equipment.

Q. That was during the sit-down strike itself?

A. Yes, sir.

Q. And were you able during the period of the sit-down strike to remove any finished merchandise?

A. No, sir.

Q. And do you recall in general figures the amount of merchandise you had on hand on May 6th, 1937, both in the finished and in the greige, what is known as the greige state?

A. We had over a hundred thousand dozen of

goods, I think the correct figure is one hundred and four thousand, some odd hundred, dozen of goods—

MR. SYME:

Your Honor, of course, that is subject to the general check of the books at the time.

THE COURT:

Yes.

BY THE COURT:

Q. How much altogether?

A. One hundred and four thousand dozen.

Q. Is that finished and greige?

A. Yes.

MR. HIRSCH:

May I correct the witness?

THE COURT:

All right; tell us.

MR. HIRSCH:

One hundred and thirty thousand.

THE COURT:

All right.

THE WITNESS:

Are you talking about greige?

MR. HIRSCH:

Greige and finished.

THE WITNESS:

Oh, excuse me; one hundred and thirty thousand dozen. I was just thinking—

BY MR. HIRSCH:

Q. And as long as we are on the subject of greige,

will you explain to the members of the jury what a stocking in greige is?

A. Well, the greige is the undyed stocking. In other words, we finish the stocking up to the point of where it is dyed, and then after that, when it is dyed, it has to be finished, formed, paired, folded, and transferred and boxed, and all that work. In other words, the greige goods is the undyed merchandise ready to go into the wareroom and the dye houses.

Q. Now, between May 6th, 1937 and June 23, 1937, when the sit-downers evacuated the property, were you able to get into the plant and remove the finished merchandise or any part of it?

A. No.

Q. Did you on May 6th have orders on hand which remained unfilled?

A. Yes.

Q. Do you remember the quantity of those, approximately?

A. Oh, about two hundred and sixty thousand dozen of goods.

Q. And why were you unable to remove your finished merchandise?

A. Because they wouldn't let us in.

Q. Who is "they"?

A. The sit-downers.

Q. Do you recall after you resumed possession of the plant, you took steps to repair the machinery and other damage, did you not?

A. Yes, sir.

Q. How long did it take to complete the major repairs to your machinery and damage?

A. November, about November 1st.

MR. SIMONS:

If Your Honor please, I understand all of this is merely more or less of a summary that is being given of the situation, rather than the details that we are to take into consideration as actual facts in this case, because they are given in a very general manner.

THE COURT:

I just don't know. This particular statement, that is not so very general; they completed the major repairs by November 1st.

MR. SIMONS:

Well, that may be true as a fact there. Now, what the actual situation may have been, or the necessity for the long delay is a matter that will have to be proven.

THE COURT:

And then, of course, you can cross examine. We will take it for what it amounts to.

MR. SIMONS:

Of course, I am prompted to ask that because of the other figures that were given, that are merely figures given by him, and, as I understand, are subject to the same check as we have on the other figures.

THE COURT:

Yes.

MR. SIMONS:

Thank you.

BY MR. HIRSCH:

Q. And when were all of the repairs completed?

A. Oh, by the end of the year, right after—about the middle of January, I would say.

Q. Now, the handling of the repairs to the damaged property and machinery and equipment was directly under the supervision of Mr. Steeple, was it not, your general office manager, who handled the details of the accounting?

A. The accounting, yes, sir.

Q. And he is better qualified to testify to the details than you?

A. He has the details.

Q. Correct. Now, then, coming back to the nature of your business, what raw materials are used by you in your manufacturing process?

A. Principally silk.

Q. And where does that come from?

A. Japan.

Q. And what other raw materials are used in the manufacture of a stocking?

A. Cotton.

Q. And where does that come from?

A. South.

Q. And were you able during the period of the sit-down strike to bring in raw materials necessary for the manufacturing of stockings?

A. No.

Q. Why not?

A. We couldn't get into the factory.

Q. What was the approximate market value of the one hundred and thirty-four thousand pair of stockings which you had on hand in the finished and in the greige state on May 6th, 1937?

MR. SIMONS:

If Your Honor please, I think that is a rather

broad order for the members of the jury and ourselves, who are not in the hosiery business, and don't know the kind, type, or the nature of the hosiery that he had on hand, merely to ask that as a statement that that is what it is, without anything more, without laying any foundation for it.

MR. HIRSCH:

I will redraft the question and say—

BY MR. HIRSCH:

Q. What was the average market value of all of the stockings, both in their finished and unfinished state, Mr. Meyer, on May 6th, 1937, per dozen.

MR. SIMONS:

I object to that, if Your Honor please. I don't think that damages can be proved on averages or on what Mr. Meyer thinks that they might have been worth on a general market. I think he has to be specific when it comes to a matter of that kind.

MR. HIRSCH:

When it comes to the proof of the actual damage, which we will have through other witnesses, we will give him all the specific information he desires.

MR. SIMONS:

If Your Honor please, I assumed that he was not trying to prove his damages at the present moment, but when he asks questions of that kind that goes clearly, definitely, to the item of damage, and if he is figuring that as an item of damage, unless Mr. Hirsch will say now that he

is not giving that as an item of damage, but merely as a picture of the entire situation, then I would object.

MR. HIRSCH:

For present purposes I will limit it to a picture.

THE COURT:

All right.

MR. SIMONS:

But my objection is, this will not be considered by the Court and jury as a question on any item of damage.

MR. HIRSCH:

Well, I intend to follow up similar testimony through other witnesses which will be of a specific nature.

MR. SIMONS:

Well, that is different.

MR. HIRSCH:

All right.

BY MR. HIRSCH:

Q. Mr. Meyer, what was the average market value of those one hundred and thirty-four thousand pair of stockings?

A. $6.15 a dozen pair, for one dozen pair.

Q. And in round figures that would be, in dollars—

A. Well, that would be—

Q. —over eight hundred thousand dollars, would it not?

A. No, six times one hundred and thirty thousand dozen.

Q. Well, if my arithmetic is correct it is in excess of eight hundred thousand dollars.

BY THE COURT:

Q. Well, what happened to the finished—what happened to the goods themselves?

A. Well, some—

Q. That is, the stockings; were they destroyed or injured?

A. Well, there were some destroyed, some had to be reconditioned, others we had to take loss on due to the fact that they were out of style, the colors weren't correct, the stylings weren't correct, and we have that all itemized.

Q. I see, I understand.

A. We have that all itemized.

Q. Well, I just wanted to know.

A. Yes.

Q. There was physical damage done to the stockings?

A. Oh, yes.

Q. What kind of damage?

A. Oh, some were—a lot of them were destroyed, a lot were missing, others had to be reconditioned as to spots that would get on, and the goods were left in the wet state, wouldn't dry out.

Q. All right, I just wanted to know.

MR. HIRSCH:

Pardon me just a minute, please. If Your Honor please, if you will permit me, I think it will be easier for everyone concerned if I now confine the balance of my questions to general matters other than the financial end of this business. The thought I have in mind is after I have proven the factual situation with all the wit-

nesses, as to what occurred, I will at one time put on witnesses to present the financial picture,—

THE COURT:

Yes, I think that is all right.

MR. HIRSCH:

—rather than do it—

THE COURT:

Do you want to recall this witness?

MR. HIRSCH:

Yes, I want to have leave to recall him. I have a few questions, and then I will complete my examination.

THE COURT:

Yes, I think that is all right. That is the logical way to do it.

BY MR. HIRSCH:

Q. Now, then, following your agreement with the union dated July 29, 1937, did you have a conference with the officers of the union as to the membership which the union had among the employees in your plant?

A. Yes.

Q. When?

MR. SYME:

I object to that, Your Honor, as entirely irrelevant. It is subsequent to May 6th. The period of damage, if there was any damage, is completely over. The injunction has been granted, the union is out of the mill, there is a contract resuming normal relationships. I don't see what relevancy the number of members the

union had at that time can possibly have to this case,—

MR. HIRSCH:

If Your Honor please,—

MR. SYME:

—allowing the broadest latitude.

MR. HIRSCH:

—I think it is relevant on several grounds. First, it is relevant so that the jury may know whether the activities of the union—

THE COURT:

Well, I don't think you need argue it. I am satisfied that it is relevant. I will overrule the objection.

MR. HIRSCH:

Read the question, please.

(The question was repeated by the Reporter, as follows:

"Q. When?")

BY MR. HIRSCH:

Q. When did you have that conference, and where?

A. Why, I had the conference down at the Labor Board office, and then I had some conferences in the attorney's office. I just would—

Q. Well, do you recall a conference in my office?

A. Yes.

Q. That was after the agreement was signed?

A. Yes.

Q. Who was present at that time representing the union?

A. Why, Mr. Leader was there. I think Mr. Syme was there.

Q. And you were there?

A. I was there.

Q. Who else from your company?

A. Mr. Struve was there. There may have been a few more there, but I just—

Q. I was there?

A. Yes, you were there.

Q. What was the subject of the conference?

A. The conference was that certain cards had been gotten out prior to the signing of this agreement.

Q. What kind of cards?

A. A regular postal card, I think it was.

Q. I mean, what was the nature of the card itself?

A. The card was a check-off proposition, and in the negotiations at that time we agreed that a new form of card should be gotten out, which they agreed to, and then we asked them to show them—show us the amount of cards that they actually had signed as to the dates, and so forth, so they brought up cards I would say totaling about four hundred, all told, that was all the signed cards that they had at that date, after we had signed the agreement on July 29th, and in looking over those dates, to recognize the signatures of our people, whatever was found there, we found about—oh, I would say, signed prior to May 6th, I don't think there was more than a dozen there, if there was that many.

Q. And the rest were signed between May 6th and the date when this conference took place?

A. That is right.

Q. Which was early in August?

A. Which was very early in August, yes.

Q. And did the union representatives at that time indicate that those cards represented all of the members for check-off purposes?

A. That is what they told us.

Q. And following that conference in the end of the month of August were you supplied with the names of the members among your employees, the names—strike that question.

Were you supplied with the names of your employees who were members of the defendant union in order that you could check-off their dues in the payments made to them by you each week?

A. Yes.

Q. And when I speak of check-offs, so the jury can understand thoroughly, I mean that your company agreed to deduct from each union member's pay whatever the agreed upon amount was which represented his dues to the union?

A. That is right, on the signed card from the member.

BY MR. SYME:

Q. An authorization card signed by the member, authorizing you to make that deduction, isn't that right?

A. That is correct.

Q. Yes.

BY MR. HIRSCH:

Q. Yes.

A. That is right.

Q. And by the end of August did they supply you with all of the members in your shop whose names they had at that time for check-off purposes?

A. Yes.

Q. And the agreement provided that you were to check off all members, were you not?

A. Yes, that is right, all those that showed a signed card.

Q. Based on the information which they gave you did you make up your records for check-off purposes?

A. Yes.

Q. Is this the record that was prepared by your company from the names given you by the union?

(A record was shown to the witness.)

A. Yes.

BY MR. HIRSCH:

Q. Merely using that record as an—

A. Yes, that is right, that is the record.

Q. —aid to your memory, will you tell us the number of names which the union gave you as being employees in your shop who were members of the union and for whom they desired you to check off dues?

THE COURT:

As of what date?

MR. HIRSCH:

As of the end of August, 1937.

A. Including all the check-off cards that I had received up to the end of August?

BY MR. HIRSCH:

Q. Yes, sir.

A. About eight hundred.

Q. Well, look at the exact figure there. It is tabulated.

A. 848.

Q. How many employees did you have in your productive departments as of the end of August, 1937?

A. Well, with the exception of the office help I would say we had twenty-four hundred, we will say, in round figures.

Q. So that in round figures this represented one-third of your employees?

A. That is right.

Q. When you signed this agreement on July 29th, 1937 it contained the following provision:

> "Whereas the union represents that it now has enrolled in its membership the majority of the employees of the company, and therefore desires to be the sole collective bargaining agency for all of the employees of the company * * *"

Did you at that time accept that representation, the majority of your employees—

A. Yes.

Q. —as being union members?

A. Yes, I was told that there was a majority there.

Q. By whom were you told that?

A. By Mr. Leader.

Q. How many members did he say he had in your plant?

A. Two thousand.

Q. Excuse me, please. During the period of the sit-down strike where was your office maintained?

A. Fourth and Green.

Q. Why?

A. I couldn't get into my own office, so I had to

maintain an office, because I had to keep on functioning, I had pay-rolls to make up, I had Social Security, and all the regular office work, and be in a position to use telephones and talk to my customers and the trade in general. I had to maintain an office.

Q. I think I did ask you that during the period of the sit-down strike you were unable to remove the finished merchandise?

A. Yes, you did ask me.

Q. And you stated the reason?

A. Because of the sit-downers; couldn't get into the plant.

MR. HIRSCH:

That is all at the present time, and I ask leave to recall Mr. Meyer for further questioning.

THE COURT:

On the financial end of the thing?

MR. HIRSCH:

Correct, sir.

THE COURT:

You have covered the ground now as to the occurrences?

MR. HIRSCH:

That is right.

THE COURT:

All right.

MR. HIRSCH:

Just one further question:

BY MR. HIRSCH:

Q. Will you tell us generally, although other witnesses will give it in more detail, the damage done to the machinery and equipment?

THE COURT:

Well, why not—

MR. HIRSCH:

All right.

THE COURT:

—leave that—

MR. HIRSCH:

I will withdraw that.

THE COURT:

Yes, what is the use?

MR. SYME:

Your Honor, for the purposes of the record I now move that all of the testimony with respect to the breaking in be stricken from the record because of the fact that it has not been properly identified in any way with the union.

THE COURT:

Well, the motion is denied at the present time.

MR. SYME:

All right.

THE COURT:

It may be renewed if there is a failure to identify the acts as those for which the union might be responsible.

MR. SYME:

Will you agree that this is the agreement by which the strike was settled?

R. HIRSCH:

It is a copy of the agreement.

MR. SYME:

Yes.

Cross Examination

BY MR. SYME:

Q. Mr. Meyer, let's start from the end with respect to this.

A. From the end?

Q. Yes. You recollect—this is a copy of the agreement, agreed to by counsel, by which the strike was settled. Paragraph number 4 of this agreement reads:

> "The union agrees to deliver to the company a written order from employees of the mill who are members of the union authorizing the company to deduct from their wages and pay over to the union the specific amount or percentage which the union will require to be so deducted by the company and paid to it. Upon receipt of said authorization the company will deduct from the wages due each pay day to such union employee the amount payable by such employee to the union, and will pay over to the union or its designee such amounts on each pay day, • • • Provided, however, that the company shall not be obliged to recognize as valid any authorization card from its employees to deduct from their wages as aforesaid unless said authorization card is in the form hereto attached and is dated at least one week subsequent to the signing of the agreement."

Now, you recollect, Mr. Meyer, isn't it a matter of fact that the union was ready to give you fifteen hundred authorization blanks at the time that the negotiations were conducted? Isn't that right?

A. No, that is not correct.

Q. Well, how many were there?

A. All I saw is what I told you.

Q. Oh, now, now, now at the conferences that were conducted by Mr. McGrady as Assistant Secretary of Labor at the time, at the conferences before the National Labor Relations Board, there sat Mr. Leader, isn't that so, and the others, and they had a stack of certainly over a thousand, ranging from a thousand to fifteen hundred authorization cards.

A. I don't know nothing about that.

Q. Oh, you don't?

A. No, sir.

Q. And do you remember why this proviso was inserted?

A. Why?

Q. Yes.

A. Yes, because we wanted new cards, because the general feeling had been that those cards that had been obtained, even that small amount which you got, was under coercion, threats and everything else, and we wanted to clear that—

Q. I see.

A. That picture. Therefore, we wanted new cards, and that is the reason why that was put in there.

Q. Now, Mr. Meyer, you now have a closed shop contract with the union, isn't that right?

A. Yes.

Q. At the time that you entered into this closed

shop contract with t e union the union represented the majority of the peopl n't that right?

A. This last closed shop?

Q. That is right.

A. Yes, that is correct.

Q. That is right. This contract also had a provision that after the expiration of a period of nine months, if I recollect,—

A. That is correct.

Q. —that then there would be a conference with Mr. McGrady, at which time if the union could demonstrate that it represented a substantial majority of the people—that is the exact term, isn't it?—that you would then enter into a closed shop contract with the union, isn't that right?

A. That is correct.

Q. At that conference with Mr. McGrady the union did demonstrate that it represented a substantial majority, isn't that right?

A. March 1st?

Q. That is right.

A. Signed cards?

Q. That is right.

A. Right.

Q. That is right. Do you know how it got that substantial majority after all in a period of nine months? You say that they represented so few at the beginning, over a period of years the union had been unsuccessful in getting your plant, and in nine months they got a substantial majority of twenty-five hundred people.

MR. HIRSCH:

I object to that only for the reason that Mr. Syme objected to my questioning about the terms of the agreement or the phases or the de-

tails of the agreement, and I don't think this is any more relevant than the phases which he objected to.

MR. SYME:

Your Honor, if I objected to phases of the agreement I withdraw the objection.

THE COURT:

Well, it is all right.

MR. HIRSCH:

All right, let the witness tell them how they got the majority.

MR. SYME:

That is right.

THE COURT:

Oh, no, now, don't.

THE WITNESS:

No.

THE COURT:

Let's not go into it.

MR. SYME:

Your Honor, I don't intend to enter into any matter subsequent to the strike. Mr. Hirsch has introduced it, and I think it becomes a perfectly proper matter for cross-examination.

THE COURT:

Well, that is the only reason I am going into it. Now, the only possible, the only possible bearing any of it can have is on how far the union was responsible for the acts of the 6th of May, and it is of some interest to know how many members they had at that time, and that is all the relevancy it has.

MR. SYME:

If Mr. Hirsch will withdraw the questions with respect to the number of members it had subsequent to the period of the strike—

THE COURT:

Yes, I really think—

MR. SYME:

—I am perfectly willing—

THE COURT.

—that is immaterial, myself.

MR. SYME:

—to stop this line of cross-examination. I don't want to go into any matter subsequent to the strike. We are maintaining harmonious relationships. There is no reason for going into it now.

MR. HIRSCH:

I will not withdraw my questions. I will withdraw my objection. If Mr. Syme wants the answer he may have it, with the permission of Your Honor.

THE COURT:

Well, now,—

MR. SYME:

If Your Honor will strike the testimony I am willing to stop this line of examination.

THE COURT:

Well, gentlemen, I won't strike the testimony and we will stop the line of examination.

MR. SYME:

Well, Your Honor, I think—

THE COURT:

All right, now, you go ahead,—

MR. SYME:

All right.

THE COURT:

—whatever you want to do about it, but that is what I am going to do. I will say to the jury that the question of how many members the union had at any time after May 6th is only relevant as bearing on how many there may have been at the 6th of May, and that fact is only relevant as bearing on the question of whether the union was or was not responsible for the various acts of violence and damage that have been testified to. Now, with that understanding we won't take any more testimony on the question of the membership of the union at a period subsequent to the 6th of May.

MR. SYME:

With that explanation, Your Honor, I am quite willing to stop—

THE COURT:

Yes, all right.

MR. SYME:

—the line of examination.

BY MR. SYME:

Q. Mr. Meyer, when you say that you had two offices or two branches in Chicago and New Orleans, what you mean is sales offices, isn't that right?

A. Offices.

Q. Yes, you don't mean factories?

A. No.

Q. You have only one factory, the factory in Philadelphia?

A. Sales representation, that is right.

Q. Yes. Now, prior to May 6th, or prior to the time that you entered into this contract with the union you have testified to the fact that you maintained an open shop?

A. Correct.

Q. Yes, you had no union members in the place, isn't that right, Mr. Meyer?

A. I didn't—I don't know.

Q. Now,—

A. All I know—

Q. —what you actually mean—

A. —is when I saw those seven cards that you produced.

Q. What you actually mean is that you had a closed shop to the union,—

A. Oh, no.

Q. —is that right?

A. Oh, no.

Q. Well, you never negotiated with the union representatives, did you, prior to May 6th?

A. Positively, as the association of which we were members of, we were trying to find a happy medium to get into a contract and an open shop contract.

Q. The Apex Hosiery never negotiated with Branch 1, isn't that right?

A. Along with—yes, it did—along with the rest of the manufacturers.

Q. The Apex might have as a member of an association—

A. Right.

Q. —met with the American Federation of Ho-

siery Workers, of which Branch 1 is a member, but Apex never met with Branch 1, isn't that right?

MR. HIRSCH:
You mean alone?

MR. SYME:
That is right, that is right.

A. No, no.

BY MR. SYME:

Q. That is right, and, furthermore, Apex instructed its counsel, didn't it, that Apex refused to meet with Branch 1.

A. Only on a question of closed shop.

Q. That is right.

A. That is all.

BY THE COURT:

Q. You mean—what do you mean by "only on the question"? You mean except for the question?

A. Yes, closed shop, I understood through counsel that Branch number 1 wanted closed shop only, and I refused to go along with them.

Q. I see.

BY MR. SYME:

Q. Now, you have testified—

MR. SYME:
Oh, I am sorry, Your Honor.

THE COURT:
No, I am through.

MR. HIRSCH:
Pardon me just a moment. I think he was

asked whether they refused to meet. There was no refusal to meet before May 6th.

THE COURT:

He says he wouldn't meet them, he says he understood the only question was closed shop,—

MR. SYME:

That is right.

THE COURT:

—and he wouldn't meet them on that.

THE WITNESS:

No.

MR. HIRSCH:

No, he doesn't mean meet; he means agree.

THE COURT:

The witness may not make it clear—

BY MR. HIRSCH:

Q. Clear that up, will you?

A. We tried to meet from the end of March on, to get some kind of—

BY THE COURT:

Q. That is, you tried to meet with No. 1?

A. With the National Association, of which they are members of.

Q. On the question of closed shop?

A. On the question of open shop, we wanted to meet on.

Q. Yes; well, it is the same thing.

BY MR. SYME:

Q. Mr. Meyer, you have testified to the fact that you never had any labor difficulties prior to May 6th, 1937,—

A. Well, how—
Q. —isn't that right?
A. How far back?

THE COURT:

No, he didn't say that, Mr. Syme. He said prior to May 6th, for some period back of May 6th, there was no controversy existing between him and his employees about anything except the matter of the closed shop, and that he testified fully about.

BY MR. SYME:

Q. Did you have any difficulties with the union prior to May 6th? What I am trying to bring to your attention, isn't it a matter of fact, Mr. Meyer, that on May 6th, 1937 there was a permanent injunction in the Philadelphia courts against Branch 1 of the American Federation of Hosiery Workers, handed down by Judge Finletter, which virtually forbad the union to come near your place or talk to any of your people, or picket peaceably, or do anything else? Isn't that a matter of fact?

A. There was one—
Q. Yes.
A. —in that time.
Q. That is right, and that was existing on May 6th, 1937?
A. I don't know what the legal end of that is.
Q. At least, on the books?
A. On the books—

MR. HIRSCH:

That was an injunction that had been handed down some six years previously, at a time when

there were some disturbances up there, and when the company went into the State courts.

MR. SYME:

That is right.

BY MR. SYME:

Q. And that was still on the books on May 6th, 1937, isn't that right?

A. If you say so—

Q. Yes.

A. —I guess it was.

Q. Mr. Meyer, you say that you had collective bargaining with your employees. You don't mean that you—that at any time you dealt through what we call a legitimate labor organization, either an affiliate of the American Federation of Labor or an affiliate of the C. I. O., did you?

A. Is that the only way you can get collective bargaining?

Q. Well, I am trying to define your understanding of it.

A. Well, I will just try to clarify myself.

Q. Well, I mean, you never—I am not asking you whether you had collective bargaining or not, but you never bargained with a union that was either affiliated—prior to May 6th—either affiliated with the A. F. of L. or the C. I. O.?

A. That is correct.

Q. That is right. It was what you would call a plant organization, isn't that true?

A. A what?

Q. A plant—by "plant" I mean it was part of the Apex plant.

A. Why, yes, they—

Q. That is right, they had nothing to do with any outside organization?

A. With any outside organization, as far as I know.

Q. I am not trying to be sarcastic.

A. Certainly, I am just trying to get it, too.

Q. That is right. Now, this organization was organized when, Mr. Meyer?

A. What organization?

Q. This plant organization or this group that you dealt with.

A. Oh, I couldn't say any definite time. As far as I know it was functioning right along and had been functioning for years.

Q. Well, let me refresh your memory. During the hearings on the injunction you testified to the fact that this organization was founded during the period of the N. R. A. Remember that?

A. Well, I mean years, now,—

Q. That is right, during the N. R. A., when Section 7(a) was incorporated in the National Industrial Recovery Act you then—or, not "you then", I don't want to say anything that would—at that time this plant organization was founded, is that right?

A. I presume that is the time.

Q. Yes. How many times did you meet with Bill Leader prior to May 6th?

A. Once, down at the Bellevue.

Q. You only met Bill Leader once prior to the Bellevue—prior to the meeting—or, prior to May 6th?

A. 6th.

Q. You met him once in the Bellevue Stratford?

A. That is right.

Q. And notwithstanding the fact that you met Bill Leader only once prior to May 6th, yet from behind a closed door you recognized Bill Leader's voice as saying, "I declare a strike", is that right?

A. And a sit-down.

Q. And a sit-down?

A. Yes.

Q. You recognized his voice?

A. I did.

Q. You heard him only once,—

A. That is right.

Q. —at an evening conference, quietly, and yet you recognized from behind this closed door what his statement was?

A. Yes.

Q. Is that right?

A. Yes.

Q. Incidentally, Mr. Meyer, you never had any agreement with this plant organization with respect to wages, hours, working conditions, or arbitration, or anything else, did you?

A. Yes, we had arrangements there, we had a regular shop committee. They elected their own people, sent their representatives down to the office. Of course, I didn't—

Q. Suppose you didn't agree with them—

A. I mean, the main end of it—

Q. I am sorry.

A. —was taken care of by the general manager, of course.

Q. Suppose you didn't agree with them on a certain issue; what happened?

A. We always had satisfaction.

Q. Well, suppose you didn't agree. Suppose the employees wanted something—

A. Well, why suppose something we didn't have?

Q. Mr. Meyer, suppose the employees asked you for something and you didn't want to give it to them. What happened? You just said so, isn't that right?

A. We would meet that condition. We always worked the proposition out satisfactorily and to the satisfaction of the people in the plant.

Q. About what percentage of the company's hosiery would you say you manufacture?

MR. HIRSCH:

Of the what?

BY MR. SYME:

Q. About what percentage of the country's hosiery would you say you manufacture?

MR. HIRSCH:

That is objected to as being irrelevant.

MR. SYME:

Oh, the man has testified to the fact—

THE COURT:

Don't argue, it is all right. It is very important.

MR. HIRSCH:

All right.

THE WITNESS:

What percentage?

BY MR. SYME:

Q. Of the country's hosiery would you say you manufacture.

A. Well, the production was running about thirty-nine million, I would say, in approximate figures.

THE COURT:
Per what?

A. Per year, on ladies full fashioned merchandise, and we figure our production a million, two to a million, two and a half; I mean, one million, two hundred and fifty thousand.

Q. Dollars?

A. No; dozen pairs.

BY MR. SYME:

Q. Can I refresh your memory? In the previous hearing you testified to the fact that you manufactured three per cent of the country's hosiery. Do you remember that?

MR. HIRSCH:
And if you will figure it up you will find that is just the same.

THE COURT:
That is just about the same.

MR. SYME:
That is splendid.

BY MR. SYME:

Q. That is right, isn't it?

A. On that we agree.

Q. All right. Mr. Meyer, when you looked at that crowd you didn't know who was in the crowd or you didn't recognize anybody that you knew in the crowd, did you?

A. You mean, now, what, those that were in the factory?

Q. No, not in the factory; on the outside.

A. No, I wouldn't say that.

Q. Yes, you did know somebody in the crowd?

A. No, I say not.

Q. Yes.

A. No, I didn't, no, right at that moment, from looking outside,—

Q. Yes.

A. —I didn't know who was just there.

Q. When you say that the only issue between you and the union was the closed shop you know that there were other issues, one of which was the double job, isn't that right, question of wages, I mean, the elimination of the double job also involved the question of wages for the helpers, isn't that so?

A. There was a question on that.

Q. That is right, and that was one of the things that was remedied in the agreement between you and the union, or, at least, from the union's angle it was remedied, isn't that right? You eliminated the double job?

A. Yes.

Q. Through a gradual process, but you eliminated the double job?

A. Yes, we agreed on that before any—

Q. That is right.

A. I mean, before this agreement.

Q. No, but I mean, that was one of the things in the agreement?

A. Well, I just want to get it clear, the reason I didn't mention it, because that was one of the things to be either frozen or gradually eliminated.

Q. Yes.

A. I mean, there was no contest on that part—

Q. I mean, one—

A. —prior to the signing of the agreement,—

Q. No,—

A. —as far as we were concerned.

Q. —but it was one of the things incorporated in the agreement—

A. That was understood.

Q. —at the demand of the union?

A. But the main thing was the closed shop.

Q. That is right, but it was, the thing that you, above all, you didn't want to grant was the closed shop?

A. That is right.

Q. That is right.

MR. SYME:

That is all, Mr. Meyer.

Redirect Examination

BY MR. HIRSCH:

Q. As a matter of fact, it is a fact that prior to May 6th and during the period of the sit-down the only thing that you refused to grant was the closed shop, and that you were willing to grant every other condition?

A. That is right.

THE COURT:

All right.

MR. HIRSCH:

And just one other—well, that is all.

THE COURT:

I think we won't call any more witnesses. We

will adjourn until ten o'clock tomorrow morning.

You remember the caution I gave you about talking about the case.

(Adjourned until Tuesday, March 14, 1939, at ten o'clock A. M.)

Philadelphia, Pa., March 14, 1939

Second Day

THE COURT:

Very well, gentlemen.

KATHRYN BRADLEY, having been duly sworn, was examined and testified as follows:

Direct Examination

BY MR. HIRSCH:

Q. Now, Miss Bradley, just sit back and relax and keep your voice up so that Judge Kirkpatrick on your right and the members of the jury on your left can all hear you. You are an employee of the Apex Hosiery Company?

A. That is right.

Q. For how many years?

A. Sixteen years.

Q. And what is your position?

A. General office work.

Q. Your office is located in the northwest corner of the building at Fifth and Luzerne Street, is it not?

A. That is right.

Q. The main entrance to the building is near your office?

A. Is right at the office.

Q. Just at your office?

A. That is right.

Q. And were you working steadily on and just prior to May 6, 1937?

A. Yes I was.

Q. At the factory every day?

A. That is right.

Q. Prior to May 6th, 1937 do you recall what if anything unusual was occurring outside the premises, as far as you could observe?

A. Yes, there was crowds of people around the premises of the mill.

Q. And what were they doing there as far as you could see, observe?

A. Well, they were stopping the mill workers and talking to them.

Q. About what?

A. About joining the union.

MR. SYME:

I object to that, Your Honor. As far as she could see or hear it is perfectly all right.

THE COURT:

Yes, only what you actually heard yourself.

BY THE COURT:

Q. Did you hear them talk?

A. Yes, I actually heard it.

THE COURT:
All right.

BY THE COURT:

Q. You heard them soliciting membership in this union?

A. I certainly did.

Q. Now, coming down to May 6th, 1937, were you in the office that day?

A. Yes, I was.

Q. And were you there at the time that this crowd of persons which Mr. Meyer described yesterday as gathering outside the premises did in fact gather?

A. Yes, I was.

Q. Tell us what you observed in so far as the gathering of the crowd outside was concerned prior to the time that anything unusual happened.

MR. SIMONS:
If Your Honor please, just for the purposes of the record may I at this time enter my objection to that, because there is no identification? I mean, I am doing it at the present time so that the record will be in shape to ask that it be stricken later on, if there is not a proper identification.

THE COURT:
All right.

A. It was right before noon, I saw crowds gathering around the mill. The crowds kept getting thicker all the time.

BY MR. HIRSCH:

Q. And where did they gather?

A. They gathered right outside the mill, all over the pavements, and all the streets were one solid mass.

Q. And what streets were they gathered on?

A. They were gathered on Luzerne Street and on Fifth Street. That is all I could see from looking out the front door.

Q. Now, in addition to the crowds what, if anything else, was outside which was not there on previous days, that you recall?

A. Sound truck.

Q. And did you notice any name on the sound truck?

A. C. I. O.

Q. And what was the sound truck broadcasting, if it was broadcasting, do you recall?

A. Well, not just then, not at that ime, before noon.

BY THE COURT:

Q. You mean it wasn't there before noon?

A. It was there before noon but I didn't pay any attention. It wasn't until after noon—

Q. All right.

A. —that I heard what they were saying.

Q. What did they say?

A. I heard a voice announce a strike at the Apex Hosiery Company.

MR. SIMONS:

I object to that, if Your Honor please; or would you just consider my objection going down the whole line of her testimony?

MR. HIRSCH:

I will lay the groundwork—

MR. SIMONS:

There is no identification.

THE COURT:

Oh, yes,—

MR. HIRSCH:

I will lay the groundwork for the witness—

THE COURT:

—I will permit you to ask to strike out anything you want later on, if there is no tie-up with the defendants here.

BY MR. HIRSCH:

Q. Before you talk about the voice, do you recognize William Leader,—

A. Yes, I do.

Q. —the gentleman sitting here at this table (indicating)?

A. Yes.

Q. Did you see him anywhere around the Apex premises—

A. Yes, I did.

Q. —on May 6th, 1937?

A. Yes, I did.

Q. Where?

A. He was standing on the front step.

Q. The front step leading to where?

A. Leading into the office.

Q. That is, the front step outside the main door—

A. Right outside.

Q. —to your office?

A. Fifth Street.

Q. Did you see him on the step?

A. Yes, I did.

BY THE COURT:

Q. What time?

A. I imagine it was between one and two o'clock. I can't say exactly.

BY MR. HIRSCH:

Q. And what enabled you to see him from inside the office, outside to the step?

A. Well, I was relieving the telephone operator at the time, and there was a watchman at the front door, and as the girls were coming, the office employees were coming back, I was identifying them for the watchman to leave them in, and at that time he said there was someone outside that wanted to see Mr. Struve, and I went to the door and looked out, and it was Mr. Leader.

Q. Where was he at that moment?

A. On the top step.

Q. Yes.

A. And he had a crowd in back of him.

Q. How many?

A. I couldn't say how many. There was about, possibly, six or eight. I recognized one person.

Q. You mean persons who were—

A. Besides Mr.—

Q. —with him?

A. Besides Mr. Leader.

Q. Who was the person you recognized?

A. William Etter.

Q. And William Etter was one of your employees?

A. That is right.

Q. And this group of six persons were with him on the steps?

A. Yes.

Q. And what, if anything, did you hear Mr. Leader say—

A. He asked—

Q. —or see him do?

A. He asked—well, he rapped on the door, and when the watchman went to the door he asked to be allowed in, that he wanted to see Mr. Struve, so Mr. Struve wasn't there just now, so he called, "Send back for Mr. Meyer", and Mr. Meyer said that the doors wouldn't be opened with a mob like that on the outside.

Q. Then what happened?

A. Well, then, it was shortly after that, I ran into Mr. Struve's office, where I had a complete view of the Luzerne Street side.

Q. Yes.

A. And they were taking a number of their younger boys and they were forming them into a picket line, and I saw someone scale up the wall and hang a sign on the wall of the building, and also put a sign around one of the youngsters' necks.

Q. Do you recall what was on the sign?

A. I couldn't see that, I just saw them put the sign around the youngster's neck. A few minutes later I heard a voice announce a strike at the Apex.

Q. Did you recognize the voice?

A. I didn't at that time, because I never heard the voice before.

Q. Have you heard the voice since?

A. Yes, I have.

Q. And based on hearing that voice since that time are you now able to identify the voice which you heard on that occasion?

A. Yes, I was.

Q. Whose voice was it?

A. Mr. Leader.

Q. And what did he say?

A. He said, "I announce a strike at the Apex Hosiery Company, and you can rest assured before the day is out there will be a sit-down strike, and it will not reopen until it opens as a closed shop".

Q. And then what happened?

A. Well, then they all started applauding and clapping hands. It wasn't long after that when the bricks started to come through the window.

Q. Where were you when the bricks started to come through the window?

A. Sitting at my desk.

Q. When you speak of bricks, how many came through the window, and what window?

A. I couldn't say how many. The first one I noticed coming through hit the desk right in front of me, right at the office.

Q. And then what happened?

A. Well, then we all ran out into the wareroom.

Q. What happened after that?

A. More bricks came through, and the first thing I knew they picked somebody up bodily and threw them through the window.

Q. And what happened after that?

A. Well, then we ran upstairs for a while, and we were quite panicky.

Q. What was going on outside?

A. A lot of yelling and screaming.

Q. Did you at that time have an opportunity to look outside?

A. I didn't at that time, no.

Q. And what if anything further happened in addition to the bricks coming through the window?

A. Well, I saw this one fellow thrown through the window.

Q. Yes.

A. And they were using bars, I could see that.

Q. What were they doing with the bars?

A. Breaking through the windows.

Q. And what windows are you speaking of as being broken by bars?

A. Then, we were out in the wareroom at that time.

Q. They were the windows on what floor?

A. They were on the first floor, in the wareroom.

Q. And they could be reached from the street with bars?

A. Very easily.

Q. Now, what happened to the crowd after that? What did they do?

A. Well, the dye house—the dye house boss came out in the wareroom then and said that he was going to get some of the girls out, and I just happened to be one of them standing there, and he took me out the back.

Q. Well, you haven't told us anything about the crowd outside. What did they do?

A. Well, they threw the bricks through the window and used the pipes, and did screaming and yelling.

Q. Did they come upon the premises while you were there?

A. These few people that were thrown through the window, that was all.

Q. And then what did you do, when that happened? You said you went upstairs?

A. We ran back and forth several times, and in

the meantime Mr. Boyd took us out through the back.

Q. Were you on the premises when the mob broke in?

A. I was in the back. I didn't actually see them break in.

Q. But were you there when they came on the premises?

A. Yes, I was.

Q. Did you see them after they were on the premises, that is what I mean?

A. Yes.

Q. And how many persons did you see?

A. I couldn't judge, it was thousands, the streets and the pavements was just one solid mass of people.

Q. And where did you go?

A. I ran out the back through the dye house.

Q. And when you got outside what did you observe?

A. Saw the whole back of the fence lined up with police officers.

Q. Now, when you speak of the back of the building you are speaking of Rising Sun Avenue?

A. That is right.

Q. And it is in the back of the building that the company has a yard?

A. That is right.

Q. That yard is enclosed with a tall wire fence?

A. That is right.

Q. And it was there you saw the police officers lined up?

A. That is right.

Q. How many of them?

A. I couldn't say. There was—they were lined up the entire fence.

Q. What were they doing?

A. Staying there, doing nothing, with their hands in their pocket, some of them with their hands in back of them.

Q. Was this at the same time that the crowd, the mob, was on the property?

A. Yes, it was.

Q. What, if anything, did you do or say?

A. When I come outside I was quite hysterical, and I saw all the police officers standing there doing absolutely nothing, and I yelled, "For God's sake, do something before someone gets killed", and they just simply ignored me by turning their back.

Q. Did you see any police officers inside the premises preventing the mob from going through at the time you were on the premises?

A. No, I didn't.

Q. Did you see any police officers that day do anything to prevent the crowd from throwing bricks through the windows or breaking the windows with pipes?

A. No, I didn't.

MR. SIMONS:

If Your Honor please, may I at this time interpose an objection to this? Certainly anything done or not done by the police does not bind the defendants in this case in any manner, or any conversations had, which are pure hearsay.

THE COURT:

Well, yes, there is no particular reason to emphasize it.

MR. SIMONS:

I can understand—

THE COURT:

The whole story has to be told.

MR. SIMONS:

Yes, well, that is why I didn't object before,—

THE COURT:

Yes.

MR. SIMONS:

—to let the whole story come in, but it certainly is objectionable from the point of view of the liability of the defendants in this case.

THE COURT:

It may not have any bearing on the liability of the defendants, but you can't tell the story without telling what the witnesses saw and heard, what happened.

MR. HIRSCH:

Cross examine.

MR. SIMONS:

No questions.

MR. HIRSCH:

Thank you. Mildred Elsner.

MILDRED ELSNER, having been duly sworn, was examined and testified as follows:

MR. SIMONS:

Your Honor, may I at this time move to strike out all the testimony given by the previous witness on the ground there has been no connection with any of the defendants in this case?

THE COURT:

Motion denied.

Direct Examination

BY MR. HIRSCH:

Q. Mildred Elsner, you are an employee of the Apex Hosiery Company?

A. I am.

Q. For how many years?

A. Two years and about four months.

Q. You were employed on May 6th, 1937?

A. I was.

Q. In what capacity?

A. General office work.

Q. Is your recollection of what happened on the outside of the property prior to May 6th similar to that testified to by Miss Bradley, ahead of you?

A. It is.

Q. Now, coming down to May 6th, where were you at the time the mob was outside?

A. I was inside at my desk.

Q. Now, before that, I beg your pardon, what, if anything, happened to you particularly prior to May 6th?

A. A few days before May 6th I came out of the office prepared to go home. My gentleman friend was waiting for me, and saw that a crowd of fellows gathered around me, and asked me to kindly sign the union. I said I had nothing to do with this argument, I belonged to the office force, therefore, that didn't include me whatsoever.

They said, "That doesn't make any difference, we want one and everyone to sign in the Apex Hosiery Company."

He came up to me and said, "You better come this way", that is, my gentleman friend who was there. He got me out of the group of fellows and I went home.

Two days following that the very same thing happened, not by the same group of fellows.

MR. SYME:

Your Honor, I object to this line of testimony with respect to anything that happened prior to May 6th. It is immaterial. It is irrelevant. It has absolutely nothing to do with the issue. That is number one.

Number two, these people are not identified. We don't know who may have done that.

MR. HIRSCH:

It has been admitted, if Your Honor please, that there is only one union in this trade—

MR. SYME:

Oh,—

MR. HIRSCH:

—and the identification of the person by name I don't think is—

THE COURT:

I will overrule the objection.

MR. HIRSCH:

—important.

BY MR. HIRSCH:

Q. Go ahead.

A. Two days after that the very same thing happened, only it was a larger group, comprised of

boys and girls, who gathered around me and told me if I knew what was good for me and if I valued my safety I should sign the cards that they had.

I insisted I had nothing to do whatsoever with their union or with the argument that was going on on the outside, and I did leave them.

Q. Now, coming down to May 6th, you were on the property when the crowd was outside?

A. I was.

Q. In the office?

A. I was.

Q. Did you observe the size of the crowd outside?

A. I only saw them accumulating, I didn't notice how large the crowd was when they finally got there, because I didn't think it was safe to go to the windows.

Q. What happened while you were on the property and while the crowd was outside?

A. I was sitting at my desk and all of a sudden a brick hit the window, and I decided to run out into the wareroom, where the rest of the office was running to.

Q. What else did you see going on on the outside?

A. I saw poles being hit—I saw people taking poles and hitting them at the window and breaking the windows. That is all I saw when I was on the main floor.

Q. What happened to the crowd? What did they do?

A. I didn't see that because I was running for my own safety. We were told to go up on the second floor where it would be safer for us.

Q. And what did you do when you got up there?

A. When I got up to the sixth floor the crowd told us up there that the bricks were hitting those windows.

Q. The sixth floor?

A. The second floor, so we went from the second floor to the third floor, and while we were up on the third floor a group of men on the main floor hollered up the stairway and told us to run for our lives, that they had gotten into the building. We ran up to the sixth floor. When I got up to the sixth floor there were a group of girls up there who had gathered together to pray. We were all terribly nervous. We stayed up on the sixth floor, and I decided I would walk over to the windows to see if I could see anything of the crowd, and as I got to the windows bricks hit the windows on the sixth floor. I turned away from the windows and decided to go down the stairway when a group of men came up the stairs. The first man in the group was a man holding a wrench. He took it up, lifted it as if to hit our heads, and said, "You better go downstairs if you know what is good for you."

We went downstairs.

Q. Had the crowd from the outside entered on the premises at that time?

A. Yes, they had.

Q. And then when you went downstairs what did you see?

A. When I got downstairs there was quite a group gathered around there holding the white union cards. They said, "You will have to sign this or you will never get out of this building."

There were quite a group of us that come downstairs, and I got lost, I got away from the rest of them. I didn't get to sign the card. I told them I

wouldn't, but those that they could get a hold of, they did, and made them sign. I got away from the rest of the group and tried to make my way back to the office. I was naturally getting mingled in with a great deal of people coming in from the outside.

Q. Would you recognize the card if you saw it now that was—

A. I would not.

Q. You would not?

A. It wasn't put down in front of my face. I saw it being placed in front of other people.

Q. And were there a number of persons with these cards, as far as you recollect?

A. Yes, a great deal of people with it, in fact everybody I saw as I made my way back to the office had a card.

Q. What was the color of the card, do you recall?

A. I believe it was white.

Q. Now, what happened to you when you got downstairs?

A. I made my way back to the office, thinking of my records that I had left on my desk.

Q. Yes.

A. And on the way back to the office there was such a terrible mob to go through, and I was so nervous and upset. half way back to the office I had something hit me in the back, and I turned around to see what it was, and who it was, and I didn't see either. Then I was pushed against the rail that is along there in the wareroom.

I finally got back to the office, and I found the office in a terrific condition. Everything was turned over, adding machines and desk, ink was all over the place, things were broken, smashed right and

left, I didn't know what to do or where to go, and I finally went back out into the wareroom, where there was an officer, and I asked him if he wouldn't kindly get me out of there, that I couldn't stand it any longer.

Q. How many officers did you see on the property?

A. One.

Q. And what did he do?

A. He said, "Well, you will have to get out of here the best way you can, girlie, there is nothing I can do for you".

Q. I show you a number of pictures, which have all been offered in evidence, purporting to be the interior scenes in the office that day, and ask if you recollect the condition of the office as being similar to the pictures which I now show you, namely, Plaintiff's Exhibits 3—2, 3 and 4.

(The witness examined the photographs.)

A. I do.

BY MR. HIRSCH:

Q. Do they correctly depict the scene which you saw—

A. They do.

Q. —on that day? Did you return to the plant that day?

A. Well, after I got out of the plant some man took me home, and after I was home I received medical attention about an hour and a half later, and I was naturally still anxious about the records which I couldn't find when I had gotten back to the office, so that I returned to the plant about seven o'clock that night.

Q. And what did you do?

A. I tried to get in the main door, but there wasn't any door there.

Q. What had happened to it?

A. I don't know, it was completely gone, and then I went around to the side entrance, and someone met me at the entrance there and said, "What do you want here?"

I said, "I am an office worker and I would like to get in the office, I would like to see what has happened to my records".

He said, "We are sorry, nobody can get in here unless they have permission".

Q. And did you recognize the person as being an employee of your company?

A. Yes, I did.

Q. And--

A. I later found out who he was.

Q. Who was he?

A. William Etter.

MR. HIRSCH:

Is William Etter in court?

(No response.)

BY MR. HIRSCH:

Q. And it was the same person who was with Mr. Leader outside—oh, pardon me, you didn't testify to that, I withdraw that.

MR. HIRSCH:

Cross examine.

Cross Examination

BY MR. SYME:

Q. The only one that you recognized was William Etter, isn't that right, I mean, in this whole melee, in this whole situation?

A. That is the only one I recognized by name.

Q. I mean, that is the only person that you knew?

A. There were other people that I would have recognized if I would have seen them.

Q. I mean, that is the only person that you recognized?

A. By name.

Q. By name, William Etter.

A. Yes.

Q. Didn't see any officer of the union there, did you?

A. I did not.

MR. SYME:

That is all.

MR. HIRSCH:

That is all.

MR. SYME:

Your Honor, for the purposes of the record I move that all the witness's testimony be stricken from the record as having been unidentified and unassociated with the union in any way.

THE COURT:

The motion is denied.

MR. HIRSCH:

Paul Bergmeister.

PAUL BERGMEISTER, having been duly sworn, was examined and testified as follows:

Direct Examination

BY MR. HIRSCH:

Q. By whom are you employed, Mr. Bergmeister?

A. Apex Hosiery Company.

Q. And for how many years have you been employed by that company?

A. Thirteen years the first of March.

Q. In what capacity?

A. Elevator operator.

Q. Were you on the property of the Apex Hosiery Company on May 6th, 1937,—

A. Yes, I was.

Q. —when the crowd broke in?

A. I was.

Q. You tell us what happened of your own knowledge, prior to the time the crowd broke in, as you observed it, or didn't you observe anything because you were working the elevator?

A. Well, I was upstairs at the time, when the noise was going on.

Q. Yes.

A. And it had been going on quite a while, so I come down. I went to the first floor, and they were throwing bricks and things through the windows, so I walked back to the elevator again and I stood there a while, and they still kept throwing, so I went back again to the first floor, I walked partway up the first floor, and I seen them coming in through the window.

Q. Saw who coming in through the window?

A. The people from outside.

Q. Yes.

A. So I had read in the paper what they do when they catch you inside—

MR. SIMONS:

I object to that, if Your Honor please.

MR. HIRSCH:

Well, now, that may be stricken.

THE COURT:

All right.

BY MR. HIRSCH:

Q. What happened?

A. So I went down in the basement, took off my glasses and put them in my locker, and I went back up on the first floor.

Q. Now, when you went back on the first floor did you see any people there?

A. No.

Q. Then what happened?

A. So I walked toward the center aisle, and as I stepped past the elevator one fellow hollered, "Who are you?", and I turned around. He didn't give me a chance to talk. They had their hands up like that (indicating). There may have been about four of them, I judge, they had their hands like that (indicating), I couldn't see their face.

Q. What was in their hands?

A. An iron pipe. He hit me on the head with it. I grabbed the iron pipe, and as I did he pulled up again, the other fellows hit me in the back of the neck, so I left the pipe go and he hit me again. Then I went down, and when I went down they kicked me in the face and in the head, and they kept kick-

ing me. They says, "You don't have to sign, you will never sign anything".

Q. What happened to you, physically?

A. They broke my jaw.

Q. Where were you taken after that?

A. Episcopal Hospital.

Q. How many weeks were you in the hospital?

A. Three weeks.

Q. And what happened to your jaw?

A. Why, I had my head stitched in two places, I had both lips stitched, my jaw is fractured down this way and across (indicating).

Q. And what was necessary to be done to your jaw to repair it?

A. They had to wire my mouth shut. My mouth was wired shut for about seven or eight weeks.

Q. What else happened to you?

A. Well, they picked me up, they says,—well, when I went down they says, "You don't have to sign, you will never sign anything", and they says, "Let's give him the works", and they started using their feet, and they kicked me in the face and in the head. I tried to protect my face by putting my hand up, and they would kick underneath. I put it down and they kicked from the top. So they picked me up, they says, "Come on, let's get you out." They walked me across the room to the Fifth Street entrance. They handed me to a cop. They says, "Take him away. He is one of them".

Q. They said that to the cop?

A. To the cop.

Q. What did he say?

A. Nothing, he just took me, walked me out the door, they walked me through the crowd on Fifth Street and Luzerne, they made me walk. I couldn't

see for blood, my nose, mouth and all was bleeding. He took me up to Luzerne Street. He says, "Get in the wagon, but don't bump your head." They didn't even help me in.

Q. And they took you to the hospital?

A. Took me to the hospital.

Q. Did you offer any resistance to these fellows that beat you up?

A. No, sir.

Q. Did you give them any provocation or reason to hit you?

A. No, sir.

MR. HIRSCH:

Cross examine.

THE WITNESS:

I didn't even know they were there.

Cross Examination

BY MR. SYME:

Q. Did you recognize any of the people?

A. No, I couldn't, because they had their hand up like that (indicating), you couldn't see their face, and after I got the first shot I couldn't see because I wear glasses and I couldn't see without them, not much.

Q. During all this time you didn't recognize anybody as being associated with the union, did you?

A. Well, I wouldn't know—

Q. That is right.

A. —whether they were associated with the union or not.

Q. Did you see any of the Apex employees there?

A. I couldn't see anybody.

MR. SYME:
That is all.

THE WITNESS:
I just seen the mob coming in. I didn't know whether they were Apex or who they were.

Redirect Examination

BY MR. HIRSCH:
Q. And you were beaten up after the mob broke into the plant, is that correct?
A. After the mob broke in.

MR. HIRSCH:
That is all.

THE WITNESS:
That same afternoon.

MR. HIRSCH:
William Goble.

THE WITNESS:
And I tell you, my jaw isn't right yet. I am still pretty sore here (indicating). It is sore here (indicating). I can't chew anything, I can't eat anything but mashed potatoes, and cut the meat up pretty fine, you might say swallow it whole. My sandwiches I have to wet before I can eat them.

MR. SYME:
Your Honor, for the purposes of the record I make the same motion.

THE COURT:
Motion denied.

WILLIAM GOBLE, having been duly sworn, was examined and testified as follows:

Direct Examination

BY MR. HIRSCH:

Q. You are an employee of the Apex Hosiery Company?

A. Yes, sir.

Q. How many years?

A. Thirteen years.

Q. Thirteen years?

A. Yes.

Q. What was your position there?

A. Work collector.

Q. Work collector?

A. Yes.

Q. Do you recall the mob that gathered outside the factory of the Apex on May 6th, 1937?

A. Yes, sir.

Q. Where were you when they were outside?

A. I was up in the second floor on the north end and looking down to that mob.

Q. Did you see the mob when they broke into the property, when they were on the inside?

A. When I heard the noise, and then bricks coming in and all the fellows running away, the fellows comes to the second floor, we ran away, and I ran down the middle stairway, when I ran right into that gang.

Q. You ran down the middle stairway—

A. Yes.

Q. —and ran into the gang; what gang?

A. Why, the fellows what is coming in.

Q. You ran into the crowd that was coming in from the outside of the place?

A. Yes.

Q. What happened to you?

A. Well, here is—soon they get me, right away, and they take me down the steps, and when I get on the floor one fellow had a pipe, this way, and I jumped, and that pipe, that didn't help much, I get it over my body, and everything, you know, and then I was on the first floor and I remember I was down.

Q. What do you mean, "down", down where, how?

A. Well, he hit me down with the pipe.

Q. What happened to you?

A. Well, I had five ribs broken.

Q. Five ribs broken?

A. Yes.

Q. Where were you taken?

A. I was taken to the Episcopal Hospital.

Q. How long were you there?

A. I think I was eighteen days.

Q. How long did it take before you fully recovered from that beating?

A. Oh, I am not recovered yet, right. Well, it took me about twelve—I don't know, about twelve weeks before I could go to work again.

Q. Didn't go back to work for twelve weeks?

A. I think it was about twelve, thirteen weeks.

Cross Examination

BY MR. SYME:

Q. When did you join the Hosiery Workers union?

A. When I signed?

Q. Yes.

A. Joined?

Q. Yes.

A. I signed up when all them signed up, because they come around my door every day, every day, seven or eight men.

Q. You are a member now, aren't you?

A. Yes, I am a member now, when I get my two bottles of tar in my window, my front door, my wife was sick, my wife was sick, I was sick, what I could do? My wife, she lost a baby with that strike, so I couldn't do anything, I have to sign up.

Q. When did you sign up?

A. When? Well, I sign up in—when Mr. Struve give the order to,—

Q. In other words,—

A. —that everybody sign up.

Q. —it wasn't because of any tar, when Mr. Struve gave you the order to sign you signed up, is that right? Isn't that right?

A. Mr. Struve?

Q. It was when Mr. Struve told you to sign up?

A. No, not me.

Q. He told everybody?

A. Everybody.

Q. That is right, when he told you people, all of you, to sign up, that is when you signed up in the union, isn't that right?

A. Yes.

Q. That was around January or February?

A. I don't know when.

Q. You don't remember?

A. I don't remember exactly.

Q. When this crowd started coming around the place where were you?

A. Second floor.

Q. Second floor. Where do you live?

A. Why,—

Q. Do you live in the northeastern part of Philadelphia?

A. Yes, that is right.

Q. You do?

A. Oh, yes.

Q. How many years have you lived there?

A. How many years?

Q. About how many?

A. Oh, about nine years, I guess.

Q. About nine years?

A. Yes.

Q. Are you familiar with the northeastern section of Philadelphia?

A. Yes.

Q. A lot of industrial plants in the northeastern part, isn't that right?

A. Oh, yes.

Q. Lot of factories?

A. Oh, yes.

Q. Can you name some of them?

A. Factory?

Q. Can you name some of the factories?

A. Well, there is hosiery down there.

Q. Outside of hosiery plants.

A. Outside of hosiery?

Q. Yes.

MR. HIRSCH:

Well, to save time I will let Mr. Syme put on the record any names of any factories he wants, if he thinks it is relevant, whatever fac-

tories are located in that section we will agree to.

MR. SYME:

Well, Mr. Hirsch, let me conduct my cross examination in my own way. Your Honor,—

MR. HIRSCH:

Well, I will object, then, to this witness being asked about factories in the neighborhood.

MR. SYME:

Now, Your Honor, there is a question here of a crowd. I am showing from this that crowd has been unidentified, the people haven't explained the crowd—

THE COURT:

Yes, I know, you can do that, but why not save time?

MR. SYME:

All right, I will name a few of the plants—

THE COURT:

We will all agree—

MR. SYME:

—and ask him if he knows whether they are there.

THE COURT:

Yes.

MR. SYME:

That is perfectly all right.

THE COURT:

There is no dispute about the plants.

BY MR. SYME:

Q. You know the Philco Radio plant is in the northeastern part?

A. Yes.

Q. They employ about thirteen thousand people, isn't that right, about that?

MR. HIRSCH:

Does he know?

BY MR. SYME:

Q. I am asking you, they employ a great many thousands of people?

THE COURT:

We will accept Mr. Syme's statement they employ around thirteen thousand people. Unless it is proved otherwise I am satisfied with it.

BY MR. SYME:

Q. You know that there was a strike out at the Philco Company plant at the same time as Apex, on May 6th, isn't that right?

A. The strike was before.

Q. Yes, and it was going on on May 6th, isn't that right, as far as you know, or you don't know? I mean, if you don't know, just tell the Court that you don't know.

A. Well,—

BY MR. HIRSCH:

Q. He is asking you about the Philco strike. Do you know anything about that?

A. Well, I know there was a strike in the Philco.

MR. SYME:

That is right.

BY MR. SYME:

Q. There was a strike at the Pioneer Paper Stock Company at the same time?

A. I don't know that.

Q. You don't know. Have you ever seen a strike in the northeastern part of Philadelphia? You said you have been living there for nine years. Have you ever seen a strike there?

A. Well, I hear—I didn't bother with strikes.

Q. You go up and back to work every day, isn't that right?

A. Yes.

Q. Right near the Apex mill there is a plant known as the Mitzi Dress Company. Are you familiar with that?

A. No.

Q. It is right near the Apex Hosiery Company. I mean, have you ever seen a picket line? Have you ever seen a demonstration in the northeastern part of Philadelphia when a strike occurs?

A. Well, sometimes, sometimes you have to see it, but if I can get away from that I don't go by it.

Q. I am not asking you whether you would like to get away from it or not, but in the eight or nine years that you have been living in Kensington have you ever seen any of these things?

A. No.

Q. You never saw any of them?

A. Not so exactly, I don't bother with them.

Q. Are you familiar—do you know the Heintz Automobile Body Manufacturing Company?

A. Yes.

Q. They employ about fifteen hundred people, isn't that right?

A. I don't know.

Q. Well, they are in the northeastern part of Philadelphia near the Apex plant, isn't that right?

A. No.

Q. When I say "near", I mean they are in the Kensington area, isn't that right, and they were on strike at the same time as the Apex plant?

MR. HIRSCH:

If you know.

BY MR. SYME:

Q. If you know. If you don't know, just say you don't know.

A. Well, I think I read in the paper.

Q. Yes, did you read in the paper—

A. Yes.

Q. —that they were on strike at the same time? Do you know any of the people from the Heintz Automobile Body Manufacturing Company, Philco Radio, Pioneer Paper Stock Company, do you know any of them?

A. Well, I used to work in Heintz.

Q. Oh, you used to work in Heintz. Do you know any of the people there?

A. No, I forget their name. That is more than thirteen years ago.

Q. Oh, I see, I see. You didn't recognize any of the union people in the crowd, did you?

A. At the Apex?

Q. Yes.

A. Yes.

Q. Whom did you recognize?

A. Well, when I come down the stairway, the middle stairway.

Q. Yes, you were on the second floor,—

A. Yes.

Q. —when this started?

A. The first one, the first one who comes up, who get my arm and my shoulder, he says, "Hello".

Q. Who is that?

A. It is Greenback, a legger.

Q. Who?

A. Greenback.

Q. When you say union official, you didn't see any union official?

A. No, no, no.

Q. You saw no union official, you saw a legger,—

A. Legger.

Q. —an employee of Apex, is that right?

A. Yes.

Q. Yes, you saw no union official in this, did you?

A. Well, I couldn't see anyone then.

Q. You didn't see—

A. They had to carry me out.

Q. Yes, you were all confused and bewildered, but you saw no union official at all?

MR. HIRSCH:

No, he was injured, he wasn't confused and bewildered.

MR. SYME:

Wait a minute, Mr. Hirsch, your client is doing very nicely.

MR. HIRSCH:

Don't put a construction on his testimony, please.

THE COURT:

Now, Mr. Hirsch, the question is perfectly proper to put just the way Mr. Syme put it. Don't interrupt, and if you have objections address them to the Court.

MR. HIRSCH:

All right, sir.

BY MR. SYME:

Q. You didn't recognize any union official, did you?

A. No.

MR. SYME:

That is all.

MARGUERITE RUPP, having been duly sworn, was examined and testified as follows:

Direct Examination

BY MR. HIRSCH:

Q. Miss Rupp, you are in what profession?

A. I have charge of the dispensary at the Apex Hosiery Company.

Q. You are a nurse?

A. Yes, sir.

Q. Graduate nurse?

A. Yes, sir.

Q. Graduate of what institution?

A. Hahnemann Hospital.

Q. What year?

A. 1913.

Q. And for how many years have you been in charge of the dispensary at the Apex Hosiery Company?

A. Ten years.

Q. And you are still employed there?

A. Yes, sir.

Q. Do you recall May 6th, 1937, when the crowd broke into the property?

A. Yes, sir.

Q. Were you on the premises when the mob broke in?

A. I was.

Q. What did you see happen?

A. Well, when they started to throw the bricks in Mr. Koelle or someone called me and said the office girls were sick, and I took some aromatics and went up in the middle of the room—

Q. Keep your voice up and speak a little slower. Go ahead.

A. I took some aromatics and went up the middle of the room, and then we were driven from the second floor on up until we landed at the sixth floor.

Q. What girls were they, do you know? I don't mean by name; what position did they occupy?

A. They were girls from the office.

Q. Yes, go ahead, then what happened?

A. And I gave them aromatics and they quieted down. We went up to the second floor. I don't know whether it was Mr. Struve or someone called up and said we should go on up or we would be hurt by glass. We kept continually going up until we got to the sixth floor.

Q. Yes.

A. This man came up with an iron crowbar, and he said we would all have to go down and sign up.

Q. Sign up for what?

A. Well, he didn't say what, he just said sign up, that is what I heard him say.

Q. Then what did you do?

A. Well, we went down to the first floor, and I went in the office, and I asked Mr. Meyer if he would go back with me to get some dispensary records, because we had men out on compensation, and if we didn't have the records they wouldn't get their money, so Mr. Meyer and I went back to the dispensary, and on the way back Mr. Leader was on the table with Bill Etter—

Q. You recognized Mr. Leader, here (indicating)?

A. I do. That is the first time I ever—I saw Mr. Syme there, also.

Q. And where was Mr. Leader and where was Mr. Syme when they—

A. Mr. Syme was sitting on the desk in the wareroom with another man. He had a brief case in his hand.

Q. Where was Mr. Leader?

A. Mr. Leader was on the table, with Bill Etter. He said this mill would never open unless it was under full union control.

Q. Who said that?

A. Mr. Leader.

Q. Is that the gentleman you are referring to,—

A. Yes.

Q. —sitting here at the counsel table (indicating)? And you saw him that day?

A. Yes, and then I went and got the records, and Mr. Struve said to me, hunt up Bill Rummel, he was injured—

Q. Before you get to that, at the time you heard

Mr. Leader make that statement was there anyone around?

A. Oh, yes, a lot of the helpers, the boy helpers, but I wouldn't recognize any special one.

Q. But there was a group around there?

A. Yes.

Q. Did you have time to observe what the group was doing?

A. No.

Q. Were you occupied?

A. As far as I could see, everything was torn up in the wareroom, stockings were torn up on the floor, the tables were tossed over. I found Mr. Meyer and I went back to the dispensary. On the way back they were still there, the boys was.

Q. Did you see Leader?

A. That I can't say—I didn't see him on the way back, no. When I went over I saw Mr. Leader. Mr. Meyer and I both stood there while he started his speech.

Q. Do you recall what happened to Mr. Meyer that day, or Mr. Struve?

A. Well, Mr. Meyer had a lump on the back of his head. He had a lot of blue and red ink all over him. Mr. Struve's arm was injured and his face was cut, and his head and his nose.

Q. What did you do for them?

A. I went back and tried to fix Mr. Struve up with what we had there in the dispensary, but there wasn't anything there to use.

Q. What do you mean by that?

A. The desk was broken, the glass top, the ink was thrown up against the wall, and the glasses in the dispensary, even the looking glasses were

broken, everything was broken and smashed. Then I went in the next morning—

Q. I show you a photograph and ask you if you can recognize the picture of Mr. Leader in that photograph.

THE COURT:

What number is this, please?

MR. HIRSCH:

Well, I will have to—it will only be used if she can identify him.

(The witness examined the photograph.)

A. This is Mr. Leader, right there (indicating).

MR. HIRSCH:

Well, let me have this marked, first. This is Plaintiff's Exhibit number 8.

(A photograph was marked Exhibit P-8.)

BY MR. HIRSCH:

Q. Do you recognize the location of that photograph, what part of the premises it was taken?

A. Yes, it is in the wareroom.

Q. And does that photograph depict the scene which you saw at the time you went through? Is that where Leader was standing on the table?

A. Right there by Josephine's desk, in the center of the wareroom, is where he was standing.

BY THE COURT:

Q. Is that the man with the hat?

A. Yes, sir.

MR. HIRSCH:

I will have to have it marked, Judge Kirkpatrick, I suppose with a cross.

THE COURT:

Well, it is all right. No, that is not necessary; the man standing up there against the column with the hat on.

MR. HIRSCH:

Let me fix it this way—it is the man who is in the top center of the picture standing against a white column with a hat on.

THE WITNESS:

This is Mr. Leader standing on the table.

MR. HIRSCH:

And on each side of him are two persons who do not have hats.

THE COURT:

That is all right.

MR. HIRSCH:

I offer this in evidence.

(The photograph was shown to the jury.)

MR. HIRSCH:

This is the picture. This is the gentleman she identified with the hat, as Mr. Leader. I will show it to you in groups of four.

BY MR. HIRSCH:

Q. Now, were any of the Apex employees injured that day to whom you had to administer?

A. No. I didn't take care of anybody—

THE COURT:

Well, Mr. Hirsch, the matter of personal injuries is not involved in this case, and it is only an incident—

MR. HIRSCH:

Well, I will press it no further.

THE COURT:

We have already covered it pretty well.

Cross Examination

BY MR. SYME:

Q. Mr. Meyer was with you all this time, is that right?

A. When I went back for the records, yes, that is the only time.

Q. When you saw Mr. Leader standing on the desk Mr. Meyer was with you at the time?

A. He was.

Q. Do you see Mr. Meyer's picture here?

(Exhibit P-8 was shown to the witness.)

A. No, I can't recognize him.

BY MR. SYME:

Q. But Mr. Meyer was with you, but he wasn't in this picture?

A. Well, he was with me, and he went back to the dispensary with me.

MR. SYME:

That is all.

MR. HIRSCH:

Now, if Your Honor please, if Mr. Syme will agree to this, there are fifteen other persons

who we are prepared to call whose testimony would be merely cumulative as to what happened on May 6th, the mob breaking in, and the testimony that has been given here by Miss Bradley, Miss Elsner, and Miss Rupp.

THE COURT:

That is the testimony as to the damage done, but without identification of persons in connection with it?

MR. HIRSCH:

Correct, the same testimony as has been given.

THE COURT:

And you would agree—

MR. SYME:

Yes.

THE COURT:

—if they were called they would so testify?

MR. SYME:

That is right.

THE COURT:

Various employees of the plant, are they?

MR. HIRSCH:

Correct, sir.

THE COURT:

All right.

MR. HIRSCH:

May I put their names on the record?

THE COURT:

Oh, yes.

MR. HIRSCH:

And that will save a considerable amount of time.

MR. SYME:

I wonder whether Your Honor would see Mr. Hirsch and myself for a moment?

THE COURT:

Yes, certainly. Come up to side bar.

(Discussion at side bar.)

MR. HIRSCH:

Suppose I give you this list. You copy it into the record, these names. I have an extra copy here, I think, of the names. I am giving the stenographer fifteen names. He will copy them in.

THE COURT:

All right.

(The names of the following were supplied by Mr. Hirsch:

Mildred Ruhl
Julia Cardwell
Kathryn Miller
Anna Boos
June Heidner
Naomi Mittelstedt
Gertrude Kes[illegible]
Grace Wagner
Ann Pfeiffer
Kathryn Smith
Sadie Silver
Grace Sterner
Frances Bauer

Milton S. Steeple
Emil R. Mott)

MR. SIMONS:

If Your Honor please, may I at this time renew the objection, to strike out all the testimony given by all these witnesses? I had not renewed it for all of them because I understood it would go to each one of them.

THE COURT:

That is all right. It is understood it applies to them all, and it is overruled as to all.

HELEN DORWART, having been duly sworn, was examined and testified as follows:

Direct Examination

BY MR. HIRSCH:

Q. Miss Dorwart, you are an employee of the Apex Hosiery Company?

A. I am.

Q. Will you keep your voice up so everybody can hear you? For how many years have you been employed by that company?

A. Over two years; not quite three.

Q. You were employed on May 6th, 1937?

A. That is right.

Q. And in what capacity?

A. As a bookkeeper and for Mr. Meyer.

Q. And among your bookkeeper duties what in particular did you have charge of? Any particular funds?

A. Oh, yes, Christmas and vacation funds.

Q. You have heard the testimony of these previous witnesses as to what happened and the crowd coming in and the destruction of the property, and so forth, have you not?

A. Yes.

Q. Is your recollection substantially the same, so that I need not ask you the same questions?

A. Oh, yes, quite the same.

Q. Now, after the crowd had broken in did you see any officer of the union on the premises?

A. Yes.

Q. Who was it?

A. Well, I saw Mr. Leader and I saw Mr. Driscoll.

Q. Is Mr. Leader the gentleman sitting here (indicating)?

A. That is right.

MR. HIRSCH:

Will Mr. Driscoll stand up?

MR. SYME:

Your Honor, I object to that.

BY MR. HIRSCH:

Q. Well, will you pick out Mr. Driscoll in the room?

A. He is the tall gentleman back there—let's see, the second one back, with the gray suit on, on the end. I knew both of them before May 6th. They had been pointed out to me while they had been around the mill.

MR. HIRSCH:

Now, Mr. Driscoll,—

THE WITNESS:

At various times.

MR. HIRSCH:

—in order that the jury may know to whom you are referring, will you stand up now, please? Come forward so the people can see you.

(Mr. Driscoll came forward.)

BY MR. HIRSCH:

Q. This is the gentleman you saw on the premises (indicating)?

A. Yes, sir.

Q. And Mr. Leader was there, also?

A. Yes, sir.

THE COURT:

All right.

BY MR. HIRSCH:

Q. Now, where was Mr. Leader when you saw him on the premises, and what was he doing?

A. Mr. Leader was on a table in the wareroom. He was standing on the table, in fact, and he was addressing a crowd of men.

Q. Did you hear what he said?

A. Yes, I did. I was standing back of one of the poles there, and there were, I suppose at least hundreds of men there, and he called to them and tried to attract their attention, and he impressed them with this one fact, that they were the sit-downers.

Q. What did he say? Just tell the jury what he said,—

A. Well, he said—

Q. —as you best recollect.

A. —that the union wasn't going to let them leave there until Apex signed a closed shop agreement, and that while they were there the union would take care of them, and all the time they were in possession they would have food provided—

Q. By whom, did he say?

A. The union, and there would be cots provided, and blankets.

Q. Did he say who would provide those?

A. Oh, he said the union, he said, "We will take care of you", and he also told them that there was a job for each one of them to do, that they might as well get organized and appoint a chairman, because these things which the union was providing would have to be taken care of, and he told them it was—he used this expression, he says, "It is just the same as if you were in the Army, now, you have these things to look after, and there will be men posted at the doors to see that—that you don't leave", or something to that effect.

All of the men—I recognized, in fact, some of the men as being our employees, but all of them didn't pay attention. There were a few up close to him who were very attentive, and one was Mr. Driscoll, and Mr. Syme was standing there.

Q. Did you see Mr. Etter there?

A. Mr. Etter was standing on the table with Mr. Leader.

Q. I show you a photograph that has already been offered in evidence as Plaintiff's Exhibit 8, and ask you whether this is a photograph of the scene which you saw on that day.

(The witness examined the photograph.)

A. I saw that picture being taken. I am quite sure the photographer was from that angle.

BY MR. HIRSCH:

Q. Do you recognize anybody in that picture? Take a good look, and tell us whom you recognize.

A. Yes, Mr. Syme is there, and Mr. Driscoll, and Mr. Leader, and Bill Etter. The others, there are a few faces I recognize—oh, yes, one of our janitors.

Q. Now, where is Bill Leader? Which gentleman is he?

A. He is the one back here, standing above the others. He stands out (indicating).

MR. HIRSCH:

Pointing to the same person that Miss Rupp pointed to when she testified.

THE WITNESS:

He was easy to pick out. So was Mr. Driscoll. He usually wore a light hat.

BY MR. HIRSCH:

Q. Will you point—

A. You could see them in the crowd.

Q. —to Mr. Driscoll?

A. Yes, he has a light hat, here.

MR. HIRSCH:

Does Your Honor think this ought to be marked, or just leave the testimony as it is?

THE COURT:

Oh, I don't care, as you want, as you please.

MR. HIRSCH:

Well, suppose we use letters for these people.

THE COURT:

Anything you want. Here is a red pencil, if you want to use that, if that will help you.

MR. HIRSCH:

Yes, that will.

BY MR. HIRSCH:

Q. Now, this is the gentleman you point out as Mr. Leader?

A. That is right.

Q. Put a letter "A" above his—

THE COURT:

Why don't you put "L" above him?

MR. HIRSCH:

All right, "L", "L" above Leader.

BY MR. HIRSCH:

Q. Now, will you point out Mr. O'Driscoll again?

A. Leo Driscoll, there it is.

Q. Is it O'Driscoll, or Driscoll?

MR. SYME:

Driscoll.

MR. HIRSCH:

We will put a "D" above Driscoll.

THE WITNESS:

There is Etter (indicating).

MR. HIRSCH:

We will put an "E" above him.

THE WITNESS:

Mr. Syme. (Indicating)

MR. HIRSCH:

Just a second. I don't know whether ink will do any better on this. There is "E" for Etter.

THE WITNESS:

Mr. Syme, do you want him?

MR. HIRSCH:

That is all right.

BY MR. HIRSCH:

Q. And, now, with reference to the time that you left the property, and with reference to the speech which you heard Mr. Leader make as to the fact that the union would provide cots and blankets, did you as a matter of fact see any cots and blankets being brought into the property before you left that day?

A. Yes, they were unloading them as I left, bringing them in. I saw the food and blankets and cots.

BY THE COURT:

Q. What time was that?

A. Very early evening.

Q. Well, what would that time be?

A. Well, I couldn't say exactly. I lost track of time.

Q. Well was it before six or after six?

A. Oh, it was after six.

THE COURT:

All right.

BY MR. HIRSCH:

Q. And did you see Mr. Leader still on the premises at the time the cots and blankets—

A. Oh, yes.

Q. —were being brought in?

A. He was there then.

Q. What else did you hear Mr. Leader say? I will withdraw that at the moment. Did you sign any application for union membership on that day?

A. I did, yes.

Q. Do you remember the circumstances under which you signed it?

A. Why, yes. When we came down from upstairs there were not one, but any number of men accosted me and the others and insisted, just made us sign a card.

Q. Do you recall the card? Would you recognize it if I showed you a card?

A. Oh, yes, because I read it. I read the last paragraph very carefully, and that is when I knew I didn't want to sign it.

Q. I show you a card entitled "Pledge Card", and ask you to look at it carefully before you answer, and tell us whether or not that is the card which you signed on that day.

(The witness examined the card.)

A. Yes, it is. It said American Federation of Hosiery Workers.

THE COURT:

Let me see it.

A. (Continued) I don't know whether it said Local or Branch No. 1. I know it had that number on it, and it said "Pledge". It said in the last paragraph that I pledge myself that I will enter into a sit-down strike against Apex Hosiery Company, and I knew I didn't want to sign that, but there

wasn't anything else to do but to sign it, because the men who handed it to me plus the others standing around him were very insistent, and I knew they meant business.

BY MR. HIRSCH:

Q. Now, what, if anything, did you hear Mr. Leader say about signing it?

A. Well, while he was standing before the crowd there were organizers moving around in the crowd, and he asked whether everybody had signed. He was checking up to make sure that everybody had.

Q. Had signed what?

A. A pledge card like this, because they were everywheres..

Q. Did you see those cards in the hands of other persons?

A. Oh, yes, it seemed most everybody—that is, not everybody, but everywhere you looked, the fellows had a bunch of these in their hands, and some had dropped on the floor. In fact, I got one so I could have it to see what it was that I had signed.

MR. HIRSCH:

I offer this card in evidence as Plaintiff's Exhibit number 9.

A. (Continued) In some cases you heard them say, "Yes, I signed that", and they would say, "Oh, doesn't make any difference, sign up again." They wouldn't take your word for it.

MR. HIRSCH:

I read this card to the jury. This is a pledge card, headed, "Pledge Card, American Federation of Hosiery Workers, Branch No. 1. Af

filiated with the C. I. O. (Committee for Industrial Organization)".

The body of the card reads as follows:

"I hereby accept membership in the American Federation of Hosiery Workers' Union and of my own free will authorize its representatives to act for me as a collective bargaining agency in all matters of wages, hours of employment, single machine system on leggers; union agreement, closed shop and check-off system of dues and assessments.

"I pledge myself if called upon to go on a sit-down strike wi'. other workers of the Apex Silk Hosiery Co. to bring about full recognition of our demands and the Union."

(Card entitled "Pledge Card, American Federation of Hosiery Workers, Branch No. 1, was marked Exhibit P-9. A copy thereof follows:

Exhibit P-9—Copy of Pledge Card

"PLEDGE CARD
AMERICAN FEDERATION OF
HOSIERY WORKERS,
BRANCH NO. 1

Affiliated with the C. I. O.

(Committee for Industrial Organization)

I hereby accept membership in the American Federation of Hosiery Workers Union and of my own free will authorize its representatives to act for me as a collective bargaining agency in all matters of wages, hours of employment, single machine system on leggers; union agree-

ment, closed shop and check-off system of dues and assessments.

I pledge myself if called upon to go on a sit-down strike with other workers of the Apex Silk Hosiery Co. to bring about full recognition of our demands and the Union.

Name
Address City
Dept.
Remarks
Date Organizer ")

Cross Examination

BY MR. SYME:

Q. Who gave you one of these cards?

A. One of the men who had come into the mill, who was with the—

Q. Well, now, how do you know that?

A. —crowd.

Q. Wait a minute, you say one of the men who came into the mill. What do you mean, one of the men who came into the mill? Did you see him come into the mill?

A. Well, now, that is understood.

Q. Well, now, nothing is understood, now, don't—

MR. SYME:

Your Honor, will you instruct the witness to answer my questions, and not try to be a wise-acre?

THE COURT:

No, I won't give her any instructions. You ought to be able to take care of the situation.

A. (Continued) Well, there were thousands of people there.

BY MR. SYME:

Q. That is right.

A. Whose faces, some of them, I could recognize their faces, but I couldn't tie up a name and a face.

Q. That is right.

A. Not with so many thousands of people.

Q. Therefore, you don't know whether when you say one of the people who broke into the mill, you don't know that, isn't that so, who gave you this card?

A. I do know that, because, you see, a crowd came in and followed right through and came right there at the wareroom, which is adjacent to the office.

Q. What you mean is, he was one of the members of the crowd who was milling around, isn't that right?

A. Well, I know this, I know that none of our employees had clubs nor wrenches nor any pieces of metal, nor bars, or anything of the sort, in their hands, because they wouldn't be able to,—

Q. How many people were there?

A. —and these people did. How many people were there?

Q. Yes.

A. In the plant?

Q. Yes.

A. You mean our employees?

Q. That is right—no, altogether.

A. Oh, I couldn't count them. There were thousands of them.

Q. And did you pick out your employees from the thousands of people?

A. Well, there were a few there I could recognize as being ours, but it was very few.

Q. So that when you say—

A. There were strange faces, and then, not only that, but our employees for the most part weren't in the mill, they had gotten out for safety's sake.

Q. Well, how do you know that?

A. Because I saw—

Q. There were thousands of people,—

A. —them go out.

Q. —and you were standing—what? I am sorry.

A. They were sent out, you see.

Q. They were sent out earlier in the day?

A. That is right.

Q. And this thing occurred later in the day, isn't that right, in other words,—

A. Followed right on the heels of the other.

Q. Well, the employees—the plant was closed at what time, according to your recollection?

A. Oh, afternoon, early afternoon.

Q. Yes, about 12:30, would you say, one o'clock?

A. Perhaps, something like that.

Q. About one o'clock, and this occurred at what time?

A. Around four in the afternoon.

Q. Around four in the afternoon?

A. It was brewing gradually.

Q. Yes.

A. And it came to a head about then.

Q. Well, isn't it quite possible that your employees who had been let out at one o'clock might have come back and been in this crowd until four o'clock?

A. Our employees didn't even want to go out.

Q. Well,—

A. They were afraid, so when they went out they didn't mix with the crowd.

Q. Oh, but you wouldn't know that there might be a lot of your employees in the plant, isn't that right?

A. Well, there were a few—

Q. Yes.

A. —people.

Q. Yes.

A. Naturally, you would have to have some—

Q. Well, you recognized Bill Etter,—

A. That is right.

Q. —and several others?

A. Well, he and a few others were up around Mr. Leader when he was addressing the crowd, when I heard him, and there were others who I recognized their faces but not their names.

Q. Yes.

A. I couldn't tell you who were in that crowd, but for the most part those people weren't interested in what Mr. Leader had to say, he had to repeat, he kept saying that, "You are the sit-downers, and you aren't going to leave here until we get a closed shop agreement from Apex, and get organized." He kept impressing them with that. They didn't take up the idea very readily. As I say, there were a few, just a very few, right close to him, and one was Bill Etter.

Q. This meeting in the mill—oh, I am sorry, excuse me, I thought you were finished—this meeting in the mill was after the conference in the office, isn't that right, with Mr. Meyer, or don't you know?

A. I presume it was.

Q. Yes.

A. I didn't watch—

Q. About what time would you say this meeting was in the mill?

A. Oh, that was in the evening.

Q. In the evening?

A. Well, late afternoon; call it early evening.

Q. When everything was practically over, isn't that right?

A. Then it was done, yes.

Q. I mean, the crowd—had the crowd dispersed?

A. Well, it was dispersing.

Q. It was dispersing. You remember that day—Oh, I don't remember about what time, do you? —a torrent of rain fell, isn't that right?

A. Well, they told me afterwards that it had rained. I don't recall that really distinctly at all. It seems to me that when I went out of the mill the streets were wet and they said it had been raining very hard.

Q. When you went out of the mill had the crowd gone?

A. A good bit of it had dispersed. That is what I was waiting for.

Q. What time did you leave the mill?

A. That I am not positive of. I lost track of time.

Q. Do you know approximately what time?

A. Well, I know it was in the evening.

Q. In the evening?

A. Yes.

Q. By the time you had left the mill had everybody else gone?

A. Do you mean outside or inside?

Q. Inside.

A. Oh, no.

Q. Had Leader gone—

A. He had not.

Q. —by that time?

A. Not when I left, because that is the last thing I saw when I left.

Q. Yes.

A. Because where he was standing isn't very far from the exit that I used.

Q. And you say that the crowd had dispersed?

A. Yes, it had, to some extent.

Q. And Leader hadn't gone as yet?

A. Well, all the people hadn't gone, and—

Q. I mean, I asked you—

BY THE COURT:

Q. Leader was still there?

A. Oh, he was still there,—

BY MR. SYME:

Q. Will you try—

A. —yes, indeed.

Q. —to refresh your memory, whether according to your recollection the crowd on the outside had gone, but Leader was still in the mill?

A. Well, I wouldn't say the whole crowd had gone on the outside then.

Q. Well, a great part of it had gone?

A. Well, I suppose the curiosity seekers had gone.

Q. The curiosity seekers had gone, but Leader was still in the mill?

A. Yes.

Q. And you say that you had waited until the crowd would disperse before you left the mill?

A. Well, to some extent, yes, that was part of my purpose, I suppose.

Q. And after the curiosity seekers had gone

from the crowd about how many curiosity seekers would you say had gone?

A. I don't know, but there were still a lot of people around the mill.

Q. Well, approximately what part of the crowd would you say had gone?

A. Well, I don't know. I was anxious to get away from the mill.

Q. Well, just approximately. Approximately how many people would you say were there—

A. I couldn't say.

Q. —at the height of this?

A. Because I took a car right away which was right across from the mill. I didn't get a good look at them at all.

Q. Now, when would you say—did you see the crowd at any time from the outside?

A. When I left the mill?

Q. No, prior to that time, when the thing was at its height.

A. No.

Q. Did you ever see the crowd?

A. Not from the outside. I saw the crowd from the inside.

Q. Inside, I see. About how many people would you say there were on the outside when you left?

A. Well, there weren't as many as what there had been.

BY THE COURT:

Q. Well, could you tell?

A. I don't know.

Q. Let's put it this way, did the crowd look half as big as it was?

MR. SYME:

She didn't know that, Your Honor, she said she never saw the crowd on the outside until she left. It becomes important, how many people—she says the curiosity seekers had gone, that Leader was still in the plant—

THE COURT:

Would you mind letting me talk to the witness?

MR. SYME:

No objection.

BY THE COURT:

Q. I was going to ask you whether you had any idea what portion of the crowd it was. Was it half as big as it was?

A. Well, it might have been about half as large, yes.

THE COURT:

All right.

BY MR. SYME:

Q. So that you would say about half the crowd consisted of curiosity seekers, is that right?

A. Well, what happened was traffic had resumed.

Q. Yes.

A. And whereas it had stopped prior to that time. You see, when traffic had stopped, meaning no trolley cars, then there was that much more space in the street for crowds. Well, by the time—that is, later on traffic had resumed, and, therefore, that naturally forced more of the people out of the way.

Q. Oh, the only reason—

A. Which, of course, changed the number of people standing around.

Q. Then according to your interpretation the only reason the people had gone was because of the fact the traffic had resumed? You didn't hear Leader address the crowd on the outside, did you?

A. Yes, I did. I heard him say that, "I declare a sit-down strike—"

Q. No, no, no, no, no, no, I am not referring to that. Did you hear Leader address the crowd after the conference in Mr. Meyer's office, asking the crowd to leave? Did you or did you not? You say that you followed Leader, this, Leader, the other, you saw Leader in the plant when you left, and when you went outside the crowd had decreased by half; did you or did you not hear Bill Leader talk to the crowd and ask the crowd to leave?

A. No, I never heard him.

Q. You didn't, and you saw Leader in the plant—

A. Yes, I did.

Q. —all the time? That is fine; that is all.

THE COURT:

Recess for ten minutes.

(Recess at 11:20 o'clock A. M.)

(MR. HIRSCH:

It is agreed by counsel for both parties that the Mr. Syme referred to in the testimony of Miss Dorwart and the preceding witnesses is the same Mr. Syme who is counsel for the defendants in this case.)

EARL STOUT, having been duly sworn, was examined and testified as follows:

Direct Examination

BY MR. HIRSCH:

Q. Mr. Stout, you are an employee of the Apex Hosiery Company?

A. Yes, sir.

Q. And for how many years?

A. Five years.

Q. In what position?

A. Office work.

Q. And what particular office work do you do?

A. Pay-roll and time work.

Q. In connection with the pay-roll and time work have you contact or do you have contact with the knitters—

A. Yes, sir.

Q. —and employees out in the mill?

A. Yes.

Q. You have heard what has been testified to as having occurred on the premises on May 6th, 1937, insofar as the premises were invaded—

A. Yes.

Q. —by a mob and destruction. Does that coincide with your recollection of events on that day?

A. Yes, sir.

Q. And did you sign anything on May 6th, 1937?

A. Yes, I signed one of those pledge cards.

Q. I show you a card that has already been offered in evidence as Plaintiff's Exhibit number 9, and ask if this is the card, or if this is the same as the card which you signed on that day.

(The witness examined the card.)

A. It is the same thing, yes.

BY MR. HIRSCH:

Q. And under what circumstances did you sign it?

A. Clubs over our heads.

Q. Did you desire to join the union on that day?

A. No, I didn't desire to join the union. You were forced to because they had clubs over your head, until you give them the card, back to them.

Q. And how long were you around the property that day?

A. Well, I wasn't around it very long, until they got us down from the sixth floor, then I come down and signed this card under force, and then I got out as quick as I could.

Q. And were there—

MR. SIMONS:

If Your Honor please, may I enter the objection at this time, because apparently we are going on another line of examination; I don't know whether Your Honor wants to continue the same objection as to the matter of identification of these persons.

THE COURT:

Well, anything you want to do. If you have an objection, make it, it is all right.

MR. SIMONS:

Well, now, I object at this time to the testimony being offered. There is no identification as to the particular persons who are alleged to have threatened him or held clubs, as he said, over him.

THE COURT:

Yes; well, I will overrule the objection.

BY MR. HIRSCH:

Q. Now, did you see these pledge cards which you have testified as being—one of which you identified as being signed by you, being distributed that day by others than the persons who solicited your membership? Were there a number of persons—

A. Oh, yes, everybody that I saw had the cards in their hands, everybody.

MR. SYME:

If Your Honor please, may I then make the general objection, so I don't have to interrupt every time, to this whole line of examination relating to what persons did in and about the premises at that time unless there is proper identification as to their relationship to any of the defendants in this case; and I object to any conversations that they have had with any persons unless they are identified with the defendants in this case.

THE COURT:

Very well.

BY MR. HIRSCH:

Q. And did you return to the property after May 6th?

A. On Saturday I returned, that is all, Saturday morning.

BY THE COURT:

Q. What day of the week was May 6th?

A. Friday.

BY MR. HIRSCH:

Q. And for what purpose did you return on that day?

A. Well, I didn't know whether we could do anything to get straightened out there.

Q. And did you return after that date?

A. Oh, about four different occasions, for different records regarding the pay-roll.

Q. Now, when you returned to the property was there any production going on that you could see?

A. Production going on?

Q. Yes, of hosiery.

A. No.

Q. Any shipments of hosiery—

A. No.

Q. —that you could observe?

A. No shipments whatever.

Q. Who was on the property?

A. All our own fellows was on the property then.

Q. What were they? What were they doing?

A. Oh, I saw some lying in bed, and some were getting up, and eating, one occasion they were having their lunch, I guess it was.

Q. And how many were there of that group, as far as you could observe?

A. Oh, I don't know, they were walking over the place, there must have been anywhere, around one hundred and fifty at that time, that I saw.

Q. And were they living on the property?

A. They must have been living there. They had beds and all; I saw them getting up.

Q. What else did you see? Did you see them eating on the property?

A. Well, I saw them eating. They offered me some of their lunch one time I was back there.

Q. And do you recall the names of any of these persons who were on the property?

A. Yes, I can recall some.

Q. Did you recognize most of them?

A. Yes, I could recognize all of them, I guess.

Q. And would it be possible for you to pick them out, even if you don't recall their name, just by recognizing their face?

A. I could tell by their faces.

Q. Now, tell us some of the names that you recall, if you recall any at this time.

A. Oh, there was—there was—I know Middleton was there.

Q. What is his first name?

A. Steve, Steven.

Q. Yes.

A. And Jene Delario, and Ernest Del Prete, and DiSannis, he was one of them.

Q. Look around the room and see if you recognize anybody in the room who was among that group.

A. No, I don't see any of those.

Q. Well, are you only looking on one side? Look on both sides of the room.

THE COURT:

Go back and walk around, if you want to.

MR. HIRSCH:

Go back and walk around.

THE COURT:

If it is too far away for you.

THE WITNESS:

I don't see anybody in the room—oh, there is Steiner and Hallstein, I see them.

BY MR. HIRSCH:

Q. Well, now, what is their name?

A. Well, Ray, Ray Hallstein and Frank Steiner; those two back in the corner.

MR. HIRSCH:

Ray Hallstein will you stand up, please?

THE COURT:

Well, he has identified them.

MR. HIRSCH:

All right; Ray Hallstein and Frank Steiner.

THE WITNESS:

Then there was Jake Schulberger.

BY MR. HIRSCH:

Q. And they were members of this group on the property?

A. They were all members, yes.

Q. Now, tell us, how did you get in the property? Did you have any trouble getting in?

A. On one occasion they wouldn't let us in, we couldn't get in, and we paraded around the streets for a while, and then we went back to the office.

Q. Who was in charge of the gates?

A. Well, it was our own sit-downers who was inside there.

Q. What do you mean by "our own sit-downers"?

A. Well, I mean the Apex fellows.

Q. You mean Apex employees?

A. Was on the inside, yes. They opened the door and let you in and let you out.

Q. Were the doors locked when you came to get in?

A. They were locked.

Q. And what had to be done in order for you to leave the property?

A. Why, the organizers, the ones in charge, had to be there to let you out. There was one occasion—

Q. Were the doors locked when you went out?

A. Oh, yes, they were locked then. See, we couldn't get out there on one occasion, when the organizer was over to another plant, we had to wait until he got back.

Q. Now, am I correct, do I understand you correctly that in order to get in and out of the property the gates had to be opened by the sit-downers who were in possession?

A. They were on the inside in possession of the gate, yes.

Q. Did you have—

THE COURT:

May I ask one question, gentlemen? Is it disputed in this case—leaving out of question the various acts of violence—is it disputed in this case that the sit-down strike, as such, was conducted by the authority of the union? Is that a subject of dispute?

MR. SYME:

Your Honor, if you would like to discuss that I would much rather discuss it at side bar,—

THE COURT:

Yes.

MR. SYME:

—or if you want to discuss it in chambers—

THE COURT:
No.

MR. SYME:
I mean, for the purpose—

THE COURT:
All right, we can go over—

MR. SYME:
I mean, for the purpose of expediting—

THE COURT:
Oh, you don't need to answer the question now. I didn't really know what your position was about it. I will have a chance to take it up with you, and perhaps it is just as well to take it up in chambers.

MR. SYME:
Thank you.

THE COURT:
I would like to find out. I don't know what your position is on that matter.

MR. HIRSCH:
Cross examine.

MR. SYME:
No questions.

MR. HIRSCH:
That is all. Mr. Struve.

F. ELWOOD STRUVE, having been duly sworn, was examined and testified as follows:

Direct Examination

BY MR. HIRSCH:

Q. Mr. Struve, you are an official of the Apex Hosiery Company, are you not?

A. Yes, sir.

Q. And what is your position with that company?

A. General manager.

Q. And as general manager what particular duties come under your direct supervision?

A. Personnel and all manufacturing.

Q. In other words, you are the factory man?

A. Yes, sir.

Q. For how many years have you been with the Apex Company?

A. Since 1917.

Q. Now, are you fully familiar with all the manufacturing operations of the company?

A. Yes, sir.

Q. You heard Mr. Meyer testify yesterday regarding the matters which transpired prior to May 6th in so far as a conference with the officers of the national union and the officers of the local union, particularly Mr. Leader, at the Bellevue-Stratford was concerned, at which the open shop manufacturers participated. Do you recall his testimony?

A. I was present at the same meetings.

Q. Well, rather than have you repeat or question you similarly, in a similar manner to the questions I put to Mr. Meyer, is your recollection of

what transpired in so far as those prior negotiations were concerned the same as Mr. Meyer's?

A. Very clear.

Q. And your testimony would be the same if questioned?

A. Yes, sir.

Q. Now, directing your attention to the date of May 6th, 1937, when the disturbance took place at your plant, when was the first time on that day that you knew of anything—withdraw that question.

What, if anything, happened prior to that date of an unusual nature, as far as you could observe?

A. Well, they were loitering around mills, around the mill, for two weeks prior to the actual happening.

Q. And what were they doing?

MR. SYME:

Your Honor, I object to that, "What were they doing?" Who were "they"?

MR. HIRSCH:

I will try to bring in who they were. We first have to find out who was loitering.

A. The people on the outside contacted our employees as they came, and took—

Q. Did you recognize any of them?

A. Yes, a number of them.

Q. Who?

A. There was quite a number of them I recognized.

Q. Do you recognize anyone sitting in this room who was outside of your mill prior to May 6th—

A. Yes.

Q. —contacting your employees?

A. Mr. Driscoll is one.

Q. Mr. Driscoll, the gentleman sitting back here (indicating)?

A. Yes, sir.

Q. Yes.

A. And I believe I can—if I have the time to think, there are a number of them I noticed.

Q. But you do recall seeing Mr. Driscoll outside?

A. Yes.

Q. And what was Mr. Driscoll and these other persons doing in so far as you could observe?

A. Well, Mr. Driscoll acted as a sort of a captain, I would say, as a direct organizer, he directed those different men just what they were to do, and as our people left the mill I saw them being contacted, and I saw them having cards handed to them, and with all the arguments that went on, too, I saw people being punched, girls being kicked, and all the likes of that.

Q. That was prior to May 6th?

A. Yes, sir.

MR. SIMONS:

Wait a second, Your Honor, may I object to that and ask that that be stricken out, unless there is some identification as to who did all this?

THE COURT:

Well, what is Driscoll's position? Is he a member of the union?

MR. SIMONS:

Yes.

THE COURT:

Is he an officer of the union?

MR. SYME:

He was a part-time organizer.

THE COURT:

Well, there is plenty—

MR. SYME:

He is not an officer now. He was not an officer at that time.

THE COURT:

I will deny the motion.

MR. SIMONS:

Well, may I say, I am not referring to the mention of the name "Driscoll", but referring to other incidents that he is relating, about what he was—

THE COURT:

Well, I know, but here is a man that testifies that Driscoll was acting as a sort of a captain and directing what was being done.

MR. SIMONS:

Well, he doesn't say that Driscoll ordered or directed it to be done, or it was even done in the presence of Mr. Driscoll.

THE COURT:

It is a matter for the jury to determine whether it was or not. I will overrule your motion.

MR. SIMONS:

All right.

THE WITNESS:

Mr. Driscoll was there with the sound truck

BY MR. HIRSCH:

Q. For how many days was there a sound truck there?

A. Well, it may have been more than two weeks, but I know, I am pretty sure when I say two weeks.

Q. What names were on the sound truck that you recall?

A. Well, I know the name very outstanding, C. I. O.—

Q. That appeared on the sound truck?

A. —organization campaign.

Q. What else happened of an unusual nature outside your mill prior to May 6th that you saw?

A. Well, at one time they tried to storm the center gate. That was about, I believe, two days or three days before that, two or three days before that, and I know I heard our employees yelling because they couldn't get out. There was, I believe, about a thousand girls that couldn't get through the gate because they had the gates blocked, and I told them they finally would get out, we would see that they will get out, but then after a half an hour our people, they became very impatient, and I really feared that there might be a lot of trouble, and I says, "Now, we can't keep these people here," I called the police, and the police came, but the police couldn't manage, there were only a few, but our people, we had to open the gates, we wanted to go home, and, of course, that day there were a lot of girls injured.

Q. How many days prior—

MR. SIMONS:

If Your Honor please, may I make the same objection to that, the indefinite "they" that did all this, that participated in this occurrence?

THE COURT:

Yes.

THE WITNESS:

I can, if counsel would like me to tell them definitely about that day, I can easy bring witnesses to that effect.

MR. HIRSCH:

No, well, now, don't worry about that.

BY MR. HIRSCH:

Q. Do you recall whether or not on that particular occasion when this group was outside you recognized anyone in the crowd from the union?

A. No.

Q. You did not?

A. No, I did not.

BY THE COURT:

Q. What proportion of your employees are men, and what proportion women? How are they divided?

A. It is about 1350 women.

Q. And about a thousand men?

A. It was more than a thousand men.

Q. About half and half?

A. It varies between 2450 and 2500, just according to the way they operate.

Q. Nearly half and half?

A. Ye nearly half and half.

BY MR. HIRSCH:

Q. Now, aside from people outside prior to May 6th, what else did you observe going on on the outside prior to May 6th of an unusual nature?

A. Well, I believe that is enough, with all kinds of commotions going on.

Q. Well, I don't want to lead you. Leaving aside the question of what you saw outside in so far as people were concerned, was there anything else that was outside your mill of an unusual nature which was not there on every other day?

THE COURT:

Oh, you can suggest to him, if you have something in mind that he doesn't know.

BY MR. HIRSCH:

Q. Were there any bricks and other things outside your mill prior to May 6th?

A. Before May 6th, late in the afternoon, why—

Q. What day, do you recall?

A. I—

Q. How many days before?

A. I believe it was on Monday, on the Monday, after 4:30, a truck came along and distributed bricks, half bricks, in the weeds on the opposite side from our mill on Luzerne Street, and one of our men, our maintenance men, and I, we saw that.

Q. Were they new bricks?

MR. SIMONS:

Now, wait, if Your Honor please, I object to that, also, for the same reasons.

THE COURT:

Well, it will all have to be sifted out somewhere. Some of these things—

MR. SIMONS:

Well, the only thing is this, if Your Honor please. We are getting quite a number of things in here without proper identification, getting a lot of color that may or may not be important, or may or may not be tied up to the union, and the reason I am making these objections is so that it will be a question; I will ask Your Honor to instruct the jury whether to consider or not to consider these various items.

THE COURT:

Oh, yes, it will have to be taken care of somehow. I have no doubt some things will have to be eliminated. I don't know how far they will go.

MR. HIRSCH:

Well, I won't press this particular phase of the examination, because all we can show is that there were bricks outside. There were bricks thrown through the windows on May 6th. Frankly, we can't say the same bricks we saw on May 3rd were the ones that were thrown through the window.

THE COURT:

That is all right.

MR. SIMONS:

If Your Honor please, that is the reason I am

objecting. Here is something that you brought in in order to lend a certain amount of color,—

MR. HIRSCH:

No.

MR. SIMONS:

—but there can't possibly be any connection or association with this incident.

THE COURT:

I wouldn't say there can't possibly be. There might be or might not be; I don't know.

MR. SIMONS:

Well, Mr. Hirsch has admitted he can't tie it up in any way.

MR. HIRSCH:

Oh, no.

MR. SIMONS:

You just said that.

THE COURT:

Well, gentlemen, let's not argue. I am taking the testimony subject to objection and it can be stricken out on motion if it appears it has no relevancy.

MR. SIMONS:

May I ask at this time, in view of Mr. Hirsch's statement that he cannot tie it up, that it be stricken from the record?

MR. HIRSCH:

No, I said that we can't produce testimony to show that it was the same bricks, but I think it would be a question for the jury.

THE COURT:

Well, gentlemen, I will grant the motion to strike out this particular testimony

MR. HIRSCH:

All right, I won't press it.

THE COURT:

The jury will not regard the testimony relative to the distribution of bricks on the Monday preceding the riot.

BY MR. HIRSCH:

Q. Now, with reference to the date of May 6th, 1937, what was the first thing of an unusual nature that you noticed occurring on that day?

A. I received telephone calls from manufacturer friends of mine telling me that—

MR. SIMONS:

Wait, we object to any conversations—

THE COURT:

Yes, just leave out telephone calls. Let it go at that.

BY MR. HIRSCH:

Q. As a result—you got calls from a number of manufacturers?

A. Yes.

Q. As a result of those calls what, if anything, did you do?

A. I tried to contact Mr. Meyer. Mr. Meyer wasn't in Philadelphia at that time. I did contact him—

MR. SIMONS:
I object to conversations —

THE COURT:
Yes.

MR. SIMONS:
—with Mr. Meyer.

THE COURT:
Don't tell us what you said. What happened? Let's get along, gentlemen.

THE WITNESS:
Mr. Meyer—

THE COURT:
We have been over this a good many times.

THE WITNESS:
—and myself felt the best thing to do—

MR. SIMONS:
I object to that, if this is a conversation not in the presence of the defendants.

THE COURT:
You tell us where you were.

THE WITNESS:
In the office.

BY THE COURT:

Q. What was the first thing you saw out of the ordinary on the 6th of May?

A. The crowd gathered to a large amount and we decided to leave our mill out at twenty minutes of one, leave the people go home, rather than have bloodshed around the mill.

THE COURT:

All right.

MR. SIMONS:

I object to that, if Your Honor please, and ask that it be stricken from the record. I don't want to be getting up all the time making these objections, but I think we are giving every possible leeway to permit the whole story to be presented. I don't think we have been captious in any of our objections, but there has to be a line somewheres.

THE COURT:

What are you objecting to now?

MR. SIMONS:

That he let them out to avoid bloodshed, and what his thoughts and anticipations might have been.

THE COURT:

Don't you think he was justified?

MR. SIMONS:

What is that?

THE COURT:

Don't you think he was entirely justified in his apprehensions?

MR. SIMONS:

No, I say, I think Mr. Struve could testify to the facts as they occurred, not to his thoughts.

THE COURT:

Well, but what harm does it do? He foresaw bloodshed and there was bloodshed. He was

right about it. I don't think it does anybody any harm for him to say that is the reason he let the mill out.

MR. SIMONS:

All right.

THE COURT:

I will overrule the objection.

THE WITNESS:

The mill was left out twenty minutes of one, very orderly. We retained the office force and maintenance men. I then called Inspector La Rue.

BY MR. HIRSCH:

Q. He is the police officer?

A. I was told then that anything unusual would happen, in fact, Inspector La Rue told me that I should call him; I called him, and he said he would be up as soon as possible. I believe within twenty or thirty minutes Inspector La Rue came into the office, and I told him that—what was occurring, and that I had left the mill out. He then congratulated me. He said—

THE COURT:

Oh, never mind. Don't say what he said.

MR. HIRSCH:

Don't tell us what he said.

BY THE COURT:

Q. What happened next?

BY MR. HIRSCH:

Q. Go ahead, tell us what happened then.

A. The next I know, about three o'clock, when the pounding started.

Q. Now, prior to that time, Mr. Meyer testified to a conversation he had with La Rue, and the suggestions that Mr. La Rue made to him at that time. Were you present, and did you hear that conversation?

A. I was present. That was right in my office.

Q. And is your recollection substantially the same as Mr. Meyer's, so that your testimony if given would be the same on that point?

A. Yes.

Q. Now, where were you when the—strike that out. What was the first intimation that you had that the mob intended to come into the place? I mean, what first happened?

A. Well, bricks came through the windows. The sashes were broken. I looked through the different floors, all the way up to the fourth. The bricks came in even on the fourth floor, that is, the lighter stones, I didn't see exactly whether they were bricks or stones, but the windows were broken up to the fourth floor, and I just wanted to see for myself whether this was going to be a murder or whether there was protection around the mill. I looked out of the window as far as I could, and I saw the mob, and I saw very few police.

Q. How big a mob was it that you saw?

A. Well, I would judge—I might have said fifty thousand, as far as that, the way it looked to me at that time, but after considering about what the street would hold, it couldn't have been more than fifteen or twenty thousand.

Q. And did you observe the actions of the po-

lice while the mob was in the act of throwing bricks through your windows and breaking the windows, and so forth?

A. Well, I saw the uniforms. They were facing the other houses, on the other side of the street, directing traffic. That is all I saw.

Q. Did you see the police make any arrests that day?

A. No.

Q. Did you see the police take any active steps to prevent the mob from breaking into your place and laying it waste?

A. No.

Q. Your shakes won't go on the record, Mr. Struve,—

A. No.

Q. —unless Mr. Rodebaugh is watching you. What did you do after you made this observation?

A. I came down to the first floor, and I saw Mr. Meyer in the center of the floor, and I said, "This is terrible, this is absolutely—"

Q. Well, don't tell us what you said to him.

A. We—we went to the office.

Q. And then what happened?

A. And just at that time, why, they were breaking through the doors, in fact, the door was down. They were coming through the partitions, moving the safes, and everything.

Q. How big a crowd?

A. Well, I tell you, it was just like—like a bunch of ants coming through. I didn't think of counting.

Q. Well, I mean, was it a large or a small crowd?

A. Well, all that could come through the door.

THE COURT:

That is a good enough picture of it.

BY MR. HIRSCH:

Q. And what happened to you? What did you do?

A. Well, we put up our hands and we were received with—well, I got an inkwell right on my chest, with red ink, and iron clubs and bars, and over our heads. I was shoved from the office to the shipping room, kicked around over the trucks there, scales—I don't know how I got out to the yard, I know I fell out, and just at that time, you know, another brick came through right into Mr. Meyer's car, not far away from me. I was bleeding by that time.

One man came to me, tried to come to my rescue, and he says, "Go under the hydrant here, I will wash your blood off", and as he did, he says, "Now, do you see what you get?", with that he socked me on the head again, and, of course, by that time Mr. Harper came to my rescue.

Q. Who is Mr. Harper?

A. Our maintenance engineer.

Q. Yes.

A. And took me into the air conditioning room in back of the big fence. Of course, the mob was hollering, "Kill Struve"!

Q. What then?

A. I recognized the fellow, by the way, that hit me. That was—

BY THE COURT:

Q. Who was he?

A. Last name was Hartman.

Q. Was he an employee of yours?

A. No, sir.

BY MR. HIRSCH:

Q. Was he a member of the union?

A. Yes, sir.

Q. Did you know where he was employed?

A. I couldn't tell you that. He is employed in Philadelphia in one of the mills.

Q. And what did you do after you went in the air conditioning room with Harper?

A. I stayed in there until I left, you know, that it was my duty to be with Mr. Meyer, because Mr. Meyer, he—I felt he was in the mob, and God knows what happened to him by now, so I wanted to get out, and again, you know, they pounded on the door there and wanted to know whether Struve was in there, and Mr. Harper held me, not to go out, but finally I left anyhow and located Mr. Meyer again, in the center of the floor in the wareroom.

Q. You located him?

A. Yes.

Q. Now, did you ever see Mr. Leader, the president of the union, on that day?

A. I saw Mr. Leader.

Q. Where?

A. In the center of the wareroom, with Mr. Meyer, standing there in the crowd.

Q. Was this after the crowd broke into your place?

A. Yes, sir.

Q. And did you have an opportunity on that day to observe the condition of your office and the rest of the premises after the mob had swept through and done its damage?

THE COURT:

Oh, we have had that many times.

MR. HIRSCH:

All right.

BY MR. HIRSCH:

Q. When did you next return to the plant after May 6th?

A. May 7th, in the morning.

Q. What was the situation then prevailing?

A. Well, we had to get in the back entrance through the gate. I don't know how we got in, we got in, and, of course, everything was demolished, the office was unsightly, and we took notice of the situation, radios going, young men and some girls being drunk. We felt the best we can do is to leave or we didn't know what would happen.

Q. That was Saturday, wasn't it?

A. No, that was on a Friday morning.

Q. All right, and then when next did you return?

A. Well, we—I didn't return no more until after we signed the agreement with the union.

Q. Well,—

A. No, excuse me, I returned on the following Sunday.

Q. That would be May 9th?

A. That was—anyway, it was the following Sunday, shortly after ten o'clock.

Q. That was the Sunday following May 6th?

A. That is right.

Q. Were you able to get into your own factory?

A. I drove down Fifth Street and around Rising Sun Avenue. I know I couldn't get in any other way because the other entrances were guarded with several men standing in front of it, so I thought I would go in the back gate, and there was a lock on there.

Q. Did you recognize the lock? I mean, what, if anything, had—

A. Well, I didn't look for that lock right away.

I know we had a lock on there, but I usually ring the bell first.

Q. Yes.

A. To attract a watchman.

Q. Yes.

A. And, naturally, a watchman answered my call, came out, and he looked at me, and I says, "Open the gate."

He says, "I can't open the gate."

"Well, why not?"

He says, "Well, I had to ask myself to get in this morning, they took the locks off and put their locks on", so I noticed—I noticed then it was a different lock.

Q. Were you ever given a key to those new locks?

A. No, sir.

Q. What else did you do that day?

A. I noticed the boys were playing baseball in the yard, and I attracted—they looked kind of strange to me, I wasn't used to that—I attracted their attention. They came over. I says, "Will you open the gate for me?"

"No," he says, "we aren't allowed."

Q. These boys were the sit-down group?

A. They were boys that worked for us.

Q. They were among the sit-down strikers?

A. Yes.

Q. And when you say you saw them playing in the yard, that was inside the gate?

A. Inside.

Q. On your property?

A. Yes, so all I could do is leave.

Q. Now, prior to May 6th you ran what Mr. Meyer called an open shop, without any agreement with any union, is that correct?

A. That is correct.

Q. Mr. Meyer was questioned yesterday about a plant organization with whom you collectively bargained. Were you directly in charge of the employees?

A. I was.

Q. Did you know of any union that was maintained by your own employees, either as an inside or a company union, prior to May 6th?

A. I don't know anything of any union outside of the union we have a contract with now.

Q. Did you ever see your entire group of employees hold meetings on your property?

A. I did.

Q. Prior to May 6th?

A. I did.

Q. Were those meetings held as a union, or as a group who were negotiating for matters of hours or wages?

A. As a group of our employees.

Q. Do you know of any of the group having been elected as an officer of this union, or whether they collected dues? Was there such a union in your plant?

A. Not in our plant.

Q. Now, Mr. Meyer spoke of collectively bargaining with your employees. Was that a fact?

A. Well,—

Q. Did you collectively bargain?

A. Sure, certainly.

Q. And how was that carried out?

A. If we had any grievance of any kind, any nature, I went to the department it affected, talked to my people, and bargained with them in that way.

Q. And were there committees appointed by the employees in various departments to deal with you?

A. Yes.

Q. Did you ever have any occasion where you were unable after discussing a matter to finally agree with your employees to their satisfaction, prior to May 6th?

A. We always agreed with one another.

Q. Are you familiar with the physical conditions prevailing in other hosiery mills in the City of Philadelphia and elsewhere? Have you been inside other hosiery mills?

A. I have been inside, yes, but I have never inquired about the conditions.

Q. The physical conditions, have you observed the inside of the mills, and how they are maintained and kept?

A. Well, let somebody else—

THE COURT:

Oh, I don't really think it is particularly—

MR. HIRSCH:

All right.

THE COURT:

—relevant.

BY MR. HIRSCH:

Q. Is your mill thoroughly modern throughout, with all modern facilities?

A. Yes.

Q. Sanitation and otherwise?

A. Yes, we try to keep it modern.

Q. What type of lighting do you have for your employees?

A. Well, for the machines, Cooper-Hewitt.

Q. What is a Cooper-Hewitt light?

THE COURT:

Well, gentlemen, I know that counsel on the other side don't want to object, but it seems to me—

MR. HIRSCH:

All right.

THE COURT:

—it is entirely immaterial to this whole matter.

BY MR. HIRSCH:

Q. Prior to May 6th did your employees in any way indicate to you that they were dissatisfied with their working conditions or their hours of work, or their rates of pay?

A. Never.

Q. Did you attend a conference at the request of the Department of Labor, United States Government, during the period of the sit-down strike?

A. I did.

Q. Where was that conference held?

A. In offices of the National Labor Relations Board.

Q. Well, now, let's get that correct; was it in the office of the Secretary of Labor?

A. Oh, that—oh, yes, that was in Washington.

Q. Yes.

A. That is right.

Q. And who was present? This was during the sit-down strike?

A. That is right, during the sit-down strike.

Q. And that was during the time when you were unable to get on the property?

A. Correct.

Q. Now, who was present at that conference in Washington?

A. Mr. Lang, Mr. Haines, Mr. Tilles,—

Q. Now, I don't know whether we are talking about the same conference. Was there a conference in Washington with regard to the sit-down strike at Apex?

A. That is right.

Q. Held with the Secretary of Labor—

A. That is right.

Q. —or his assistant?

A. That is what I mean.

Q. Go ahead.

A. Mr. Constantine.

Q. Who was Mr. Constantine?

A. He is now the president of the National Association of Hosiery Manufacturers.

Q. Go ahead.

A. Mr. William Leader.

Q. President of this union?

A. Of this union. Mr. Driscoll.

Q. Mr. Driscoll is the gentleman sitting in the back, who has already been identified—

A. That is right.

Q. —by various witnesses?

A. Mr. Rieve.

Q. Who is Mr. Rieve?

A. He is the president of the Federation of Full Fashioned—

Q. That is, the national union,—

A. That is correct.

Q. —of which this defendant union is a branch?

A. Right.

Q. And who represented the Secretary of Labor?

A. I can't recall that name.

Q. Edward—

A. Oh, that was Mr.—I can't just recall the name.

Q. Edward—

A. McGrady.

Q. —F. McGrady?

A. Mr. McGrady, that is right.

Q. Now, what was the general purpose of that conference?

A. The general purpose of that conference was to—to settle these strikes, to settle our own and conditions in general, because strikes existed all over.

Q. What, if anything, did Leader have to say about your particular strike, if anything?

A. Well, he said that, "My union won't call off this sit-down strike until you sign up a full closed shop".

Q. And who did he mean when he said "you"?

A. Well, he meant the Apex Hosiery Company. That was directly addressed to us at that time.

Q. Now, during the period that the sit-downers were in possession of your property were there any manufacturing operations at all conducted by your company?

A. Not at all.

Q. Nor were there any shipments of finished merchandise?

A. No.

Q. You recall that on July 29, 1937 an agreement was signed with this union?

A. Yes, sir.

Q. Had you been able to do any manufacturing at all prior to July 29th?

A. No.

Q. Why not?

A. Well, the place was demolished. We couldn't get in, in the first place.

Q. And were you able to do any manufacturing after July 29th?

A. No.

Q. Until what time, in so far as—

A. Until—

Q. —complete operations were concerned.

A. Until we had the machines fairly under control, repaired, I believe that it was about—we started to manufacture about the middle of August.

Q. Was that full manufacturing?

A. No, sir.

Q. When were the major repairs to the machinery completed?

A. Beginning of November.

Q. And how long did it take to make all the repairs to the plant?

A. I would say practically to the beginning of January, 1938.

Q. Now, without going into any detail, because we have other witnesses for that purpose, were you able after you finally went upon the property to make an examination of the damage to the various machines?

A. I made, yes, examinations.

Q. Will you tell us in general what you found as to the condition of these machines?

MR. SIMONS:

If Your Honor please, I think that I will have to object to it.

THE COURT:

Well, yes, we did have that once, in general,

just to introduce us to the subject. Now, do you have any specific evidence?

MR. HIRSCH:

We have persons who made a minute examination.

THE COURT:

Well, let's not go over this again.

MR. HIRSCH:

All right, I will withhold that at the moment.

THE COURT:

I let Mr. Meyer testify in general to that.

MR. HIRSCH:

Yes.

THE COURT:

Just so we would get a general view of the whole thing, but there is no use of going on with it in view of the fact that you are going to produce definite evidence on that point.

BY MR. HIRSCH:

Q. Now, during the period that the sit-downers were in possession of your property were you able to send any fixers to keep the machines in repair.

THE COURT:

Well, Mr. Meyer testified to that. I don't think it is necessary to cumulate on this.

MR. HIRSCH:

All right.

THE COURT:

If there is any dispute about it I will permit you to recall witnesses in rebuttal.

MR. HIRSCH:

I want to get his opinion on one phase of it, namely, corrosion, leaving the machines idle.

THE COURT:

All right.

BY THE COURT:

Q. What is the effect of leaving the machines idle and without constant attention?

A. Well, they come in disrepair.

Q. Even if nothing is done to them?

A. That is correct.

Q. Even if nobody interferes with them, they will fall into disrepair by being let alone?

A. Absolutely.

THE COURT:

All right.

BY MR. HIRSCH:

Q. Now, in so far as your machines are concerned, the ones that you observed when you got in possession of your property, and directing your attention only to those machines which were not actually damaged, what was the condition of those which were not actually damaged, but which were as they were by reason of being allowed to remain idle?

A. Well, partly rusty, corrosion had set in, dust settled on oil and hardened, and that was sufficient that you couldn't operate the full fashioned knitting machine until it was cleaned, all of them.

Q. Now, who understood those particular repairs? I am talking now only of the machines which were not damaged, because the machines which

were damaged were repaired by a particular concern, were they not, the Reading Textile mill?

A. Yes.

Q. Now, who repaired the other machines?

A. My own men repaired those machines.

Q. Reading Machine Works, that is right, Reading Machine Works.

A. No, they were repaired by our own men.

Q. No, I am correcting what I had said about the Reading Textile. Do you recall how many machines were repaired by your own men?

A. Well, we had at that time 361 machines. Two were half way erected; I would say 359; and 134 were badly damaged.

Q. And those badly damaged machines were repaired by Reading Textile Machine Works?

A. By Reading Textile Machine Works.

Q. And the balance would be approximately two hundred and twenty-five machines.

A. That is about right.

Q. That is about right, if my arithmetic is correct.

A. That is right.

THE COURT:

Well, now, I want to recess five minutes earlier today because I have something that has to be attended to, and we will recess until two o'clock. I wonder if counsel could meet me at quarter of two and go over some of these matters that have come up I think that I can be there, in chambers, at quarter of two.

(Recess, 12:25 until 2 o'clock P. M.)

After Recess

Present: Counsel as before noted

F. ELWOOD STRUVE, recalled.

Direct Examination (Continued)

BY MR. HIRSCH:

Q. Mr. Struve, you were in court yesterday when Mr. Meyer testified, were you not?

A. I was.

Q. And rather than have you repeat answers to questions pertaining to matters about which he testified, and in which he said you participated, let me ask just these general questions. You recall his testimony regarding a meeting held in the early part of August in my office, attended by Mr. Leader and Mr. Syme, yourself, and Mr. Meyer, wherein you went over the check-off cards?

A. I do.

Q. And you recall his testimony that there were no more than four hundred cards shown to you at that time?

A. Correct.

Q. Is that your recollection?

A. It is.

Q. And do you recall how many cards were dated prior to May 6th that were shown you at that time?

A. Yes, sir.

MR. SYME:

Pardon me, Your Honor, I thought we went into all of that.

THE COURT:

Yes, we did, and I don't think it is very material.

MR. HIRSCH:

All right.

THE COURT:

I think it has very little to do with it.

MR. HIRSCH:

All right.

BY MR. HIRSCH:

Q. Your testimony would be the same as Mr. Meyer's on that question?

A. Only one correction, before May 6th.

BY THE COURT:

Q. What is your correction?

A. Seven.

Q. You say there were seven?

A. Yes.

THE COURT:

All right.

BY MR. HIRSCH:

Q. And you recall Mr. Meyer's testimony about being supplied with the names of union members among your employees in the latter part of August. He testified that there were 848 names given you for check-off purposes.

MR. SYME:

Your Honor, I thought you had disposed of that question. Mr. Hirsch still continues on that line.

THE COURT:

I think we have enough on that, Mr. Hirsch.

MR. HIRSCH:

All right.

THE COURT:

It is really not material on what happened here.

MR. HIRSCH:

All right. Other questions would merely be cumulative, if Your Honor please, and I will close my examination.

THE COURT:

All right.

MR. HIRSCH:

Cross examine.

Cross Examination

BY MR. SYME:

Q. Mr. Struve, you had shop rules, isn't that right, in your shop?

A. Yes.

Q. Is that a copy of your shop rules, Mr. Struve?

(A document was shown to the witness.)

A. As of what date, Mr. Syme?

BY MR. SYME:

Q. Do you remember having these shop rules on your bulletin board prior or immediately preceding and on May 6th, 1937?

MR. HIRSCH:

I think that is objectionable, if Your Honor please, as being immaterial, unless Your Honor thinks it ought to go in.

THE COURT:

Well, I can't tell. I don't know what counsel has in mind.

MR. HIRSCH:

All right.

THE COURT:

I will let it go in.

THE WITNESS:

They were.

BY MR. SYME:

Q. They are?

A. Yes.

Q. Mr. Struve, the first rule in these shop rules is: "This mill operates on the non-union basis". Do you remember that?

A. Yes, I do.

Q. And that was on your bulletin board on May 6th, isn't that right?

A. Yes.

MR. SYME:

I offer this in evidence, Your Honor, as Defendants' Exhibit number 1.

MR. HIRSCH:

You can't offer it at this time.

THE COURT:

Well, he can't offer it now,—

MR. HIRSCH:

Yes.

THE COURT:

—but unless you object to it I will receive it now.

MR. HIRSCH:

All right.

MR. SYME:

All right.

(Shop Rules of the Apex Hosiery Company were marked Exhibit D-1. A copy thereof follows:

Exhibit D-1—Shop Rules

"Shop Rules

1. This mill operates on the non-union basis.

2. All employees must be at their places promptly at starting periods.

3. Employees must continue at their work until whistle has blown.

4. Employees are prohibited from leaving their respective places and interfering with other employees during working hours.

5. All employees must keep their places clean, and must sweep their aisles out into the main aisle each day.

---

6. All employees have the legal right to earn all they can, and keep all they earn; their rights must not be interfered with in this respect. This firm guarantees the price per dozen will not be reduced because of the extra wage any employee earns through industrious efforts and skillful efficiency.

---

7. Every employee is responsible for his or her work, and for any mistakes, such as using wrong yarns, or silk, making wrong lengths,

courses, sizes, mixing of wools, etc., or rough handling, whereby seconds or thirds are produced.

8. Knitters must at all times avoid unnecessary wasting of yarn or silk, knitting of a leg or foot after it is spoiled in knitting must be pressed off immediately.

9. Only those machines can stop on account of shortage of raw materials as are directed by the manager.

10. Cleaning machines while in motion is not permitted. A cleaning gang will help knitter to clean machine, using one hour each week.

11. Knitters must not mend their work. All menders must be placed in separate bundles of one dozen pair each, and be plainly marked and delivered as mender dozens.

12. Bobbins or cones of yarn or silk must be carefully handled. At no time must bobbins or cones be thrown nor anything done that will damage them.

13. Silk or yarn must not be pulled off cones or bobbins, but must be returned to the bobbin or cone collector.

14. Machines must not be left running in absence of the operator.

15. Smoking or chewing tobacco is positively prohibited on the premises.

16. Profanity or the use of vulgar language is prohibited.

17. Any employee absent without permission or notifying the firm for the cause of their absence has practically left, and must consult the person in charge of their department before resuming work.

18. Employees are prohibited from throwing refuse from the windows or about the premises. Cans are provided on each floor to receive refuse.

19. Talking or signalling to persons on the outside from this mill is prohibited.

20. Reading or eating during working hours is prohibited.

21. All employees handling hosiery must count same carefully, as any reported shortage will be charged to the last operator at full price.

22. All just complaints must be made to persons in charge of the department. If same cannot be straightened out, this matter must be referred to the general manager; also any suggestions for the good of the firm should be taken up in the same manner.

23. All employees are requested to give at least one week's notice of their intention to leave their employment.

24. Any violation of the above rules subjects the person for dismissal.

25. The General Manager has full authority to act in all matters pertaining to shop conditions and the manufacturing of our product.

By Order of
Apex Hosiery Company.")

BY MR. SYME:

Q. So that when Mr. Meyer testified that your shop was operated on an open shop, it really was operated on a non-union basis, isn't that right, Mr. Struve?

A. No.

Q. Well, what do you mean by this?

A. That was disregarded, not in effect.

Q. And yet it was on all of your bulletin boards on May 6, immediately preceding the strike, isn't that right?

A. It wasn't on the bulletin boards.

Q. Well,—

A. It was framed. That particular one must have been taken out of a frame.

Q. All right, it was framed, and it was hanging in the mill, isn't that right?

A. That is correct.

Q. That is right.

THE COURT:

May I see the rules?

MR. SYME:

Surely.

BY MR. SYME:

Q. You had all sorts of instructions on these rules to your employees, isn't that so? Did the other rules prevail?

A. Did not.

Q. The other rules did not prevail. Why did you put this rule on, "This mill operates on the non-union basis"? You printed this, didn't you?

A. We had that printed, yes.

Q. And you put it up, and you allowed it to stay there, isn't that right?

A. We allowed it to stay there, yes.

Q. And yet you say you didn't intend that as one of the rules?

A. No.

Q. Mr. Struve, you have testified to the fact that if your employees had any grievance they could indicate it to you, is that right?

A. Yes.

Q. How did they indicate any grievance that they might have to you?

A. Well, they would have to come to you and tell you about it.

Q. Well, you had twenty-five hundred employees?

A. Correct.

Q. Did each individual employee come to you with his grievance?

A. Yes, if they felt that way.

Q. Each individual employee would come to you with his grievance?

A. Yes.

Q. Do you have shop committees?

A. Yes, we had shop committees.

Q. How were the shop committees elected—or, were they elected?

A. They were elected among the employees.

Q. You have testified to the fact that there never was any other union in your place outside of the union with which you have contracted, that is, the American Federation of Hosiery Workers,—

A. That is correct.

Q. —is that right?

A. Yes.

Q. Do you remember this organization, the Na-

tional Association of Hosiery Workers, circulating cards in your plant as of May 6th and prior to May 6th?

(A card was shown to the witness.)

A. No, I don't.

BY MR. SYME:

Q. You don't. Did you print a magazine in your place?

A. No.

Q. Did your employees print a magazine in your place?

A. This, if you refer to that magazine, that magazine was printed by the printer, by men outside of the mill, not in the mill.

Q. Well, I know, it was printed by the printer.

A. Well, you asked me whether we printed in the mill.

Q. I show you the Apex Social Chat, once a month, for and about the employees of the Apex Hosiery Company.

MR. HIRSCH:

Dated what date, Mr. Syme?

MR. SYME:

Dated May, 1936, with a picture of Mr. Meyer in front.

THE COURT:

Let me see it.

BY MR. SYME:

Q. Who paid for the printing and who edited this magazine?

A. That was edited by anybody that would want to have something to be printed in that paper.

BY THE COURT:

Q. Who paid for the printing?

A. Why, the advertisers.

Q. What?

A. The advertisers.

Q. Well, is it a company publication or is it an employee publication? Was it published with the assistance and the approval of the company?

A. That is right, that is right.

THE COURT:

All right, that is it.

BY MR. SYME:

Q. I show you the issue of June, 1936—or, as far as that goes, May, 1936—and read you the list of people who are in charge of this Social—Apex Social Chat: F. Elwood Struve, editor; William Meyer, honorary editor; F. W. Koelle, advertising manager—you will pardon me if I mispronounce some of the names—

A. That is all right.

Q. —that I am not familiar with. Then you go on with the editorial staff. Then you come to shop representatives, Harry Swoyer, Oscar Hoch, John Schork, Edward Frank, and so on. These are employees, isn't that right?

A. That is correct.

Q. In other words, in the editorial staff of this Apex Social Chat you have first the company officials, and then you have your shop representatives, is that right?

A. That is correct.

Q. And was that the composition of this organization with which you dealt?

A. That is right.

Q. That is all with respect to this. Just one minute. You testified to the fact that Hartman was a union member, isn't that right?

A. Yes, to my knowledge.

Q. When did you first meet Hartman?

A. In—first met Hartman, I believe that must have been about 1918, '19.

Q. Was he a member of the union at that time?

A. Yes.

Q. Did Hartman ever hold office in the union, as far as you know?

A. That I don't know.

Q. Well, you know as a matter of fact that he doesn't hold office in the union today?

A. No, I couldn't say that.

Q. Mr. Struve, you have testified to the fact that there was a sound truck in front of your place?

A. Yes, sir.

Q. Did you ever hear what anybody said from the sound truck?

A. No, sir.

Q. Isn't it a matter of fact that what the American Federation of Hosiery Workers, Branch 1, was doing was trying to organize your employees, trying to get them to join the union, isn't that right?

A. That is right.

Q. The union had tried to secure membership in your place for some time, isn't that right?

A. I guess so.

Q. Did you post these shop rules, that this is a non-union shop, after Judge Finletter had handed down his injunction forbidding the union to organize?

A. No, sir.

Q. When did you post it?

A. That was after 1921.

Q. You posted this after 1921?

A. Yes.

Q. I see, and you have had it on your bulletin board from 1921 to May 6th, 1937, is that right?

A. Yes, I guess that is correct.

BY MR. HIRSCH:

Q. Was it on your bulletin board?

A. No.

BY MR. SYME:

Q. Well, it was framed—

A. Framed.

Q. —in your plant?

A. That is right.

Q. How did you know Hartman was a member of the union?

A. He was a member of the union when I knew him.

Q. Well, how did you know that?

A. Well, because he worked at one time with the Apex Hosiery Company, for the Apex Hosiery Company.

Q. What happened to him? You say that he is not working at the Apex Hosiery Company today.

A. Well, he left.

Q. Or, was not working on May 6th.

A. He left, he left.

Q. He left, or did you discharge him?

A. No, he left.

Q. He left of his own volition?

A. Yes, sir.

Q. He was a member of the union while he was in your place?

A. Yes.

Q. How long did he work for you?

A. Well, I couldn't tell you that exactly, now.

Q. You asked him whether he was a member of the union while he worked for you, isn't that right?

A. Yes, I did.

Q. Did you make it a habit of asking your employees whether they were union members while they worked for you?

A. At that time, yes, because we were compelled under the contract, under the rule.

Q. Under what rule?

A. We were—prior to 1921, we were one hundred per cent union.

Q. And Hartman worked with you prior to 1921?

A. That is correct.

Q. I see, but after 1921 he didn't work with you?

A. No.

Q. I see. When you say you were under contract prior to 1921 you don't mean that you were under contract with the American Federation of Hosiery Workers, do you?

A. Well, it wasn't a contract, but under the understanding we had with the union at that time, nobody could be employed unless they had a paid-up union book.

Q. Well, when you say—was that with the American Federation of Hosiery Workers?

A. Yes.

Q. Branch 1?

A. Yes, that is correct.

Q. That was prior to 1921?

A. Yes, sir.

Q. What happened, Mr. Struve?

A. What happened?

Q. Yes, how is it that you began operating as a non-union or as an open shop subsequent to 1921?

A. At that time there was a strike in Philadelphia.

Q. Yes.

A. General strike.

Q. Yes, and what happened?

A. Well, we started to operate any way we saw fit.

Q. I see, and—

A. We just started.

Q. —you broke off your relationship with the union, is that right?

A. Exactly.

Q. In other words, the union went out on strike and you didn't replace the trade union members?

A. Oh, yes.

Q. You broke the strike at the time?

A. Yes, they came back.

Q. They came back, but you didn't take them back as union members, you took them back as non-union people?

A. No, they came back as union members.

Q. Did you have a contract with the union after 1921?

A. No, there wasn't such a thing at that time.

Q. And after '21—

A. It wasn't known.

Q. And after 1921 you wouldn't contract with the union, isn't that right?

A. That is correct.

(Discussion between counsel.)

MR. SYME:

All right, well, I wanted to introduce a cer-

tain paragraph here, Your Honor, I wanted to ask Mr. Struve about that, but Mr. Hirsch insists that I read the entire thing. It isn't very long. Will Your Honor bear with me?

MR. HIRSCH:

If it is relevant.

THE COURT:

What is it all about?

MR. SYME:

What is that?

THE COURT:

What is it all about?

MR. HIRSCH:

Something that was published the year before. I have no objection to him asking if it was published and reading it, but let him read the article, if that is the article.

THE COURT:

Let me see it.

I don't see the slightest necessity of reading any of it. I don't insist on anything. If counsel does not object I will permit you to read anything you want.

MR. HIRSCH:

Well, I will wait until he makes his offer or refers to it. Then I will make my objection if necessary.

THE COURT:

Counsel for the defendants proposes to read a portion of an article from a magazine.

MR. HIRSCH:

Well, then I object to reading a portion. I submit that I have no objection if he will read the entire article, but to take one paragraph out of its complete text would not be fair.

THE COURT:

Well, I agree that the entire article is irrelevant, and if you object to reading a portion I will sustain that objection.

MR. HIRSCH:

Well, I object to reading the portion.

THE COURT:

I will sustain the objection.

BY MR. SYME:

Q. Did you participate in the writing of any of the articles in this magazine, Apex Social Chat?

A. Yes, sir.

Q. Did you write any of them?

A. Not directly; with the help of all our people.

Q. Yes, did you at any time comment in the Apex Social Chat on your attitude toward the National Labor Relations Act?

A. Never.

Q. Did you at any time indicate to your employees what your attitude was toward the National Labor Relations Act?

A. Never.

Q. In any way?

A. Never.

MR. SYME:

Your Honor, again, that becomes exceedingly pertinent.

THE COURT:

Gentlemen, I think we ought to understand thoroughly that there is no question here—this jury is not trying the question of whether the Apex was a good employer or a bad employer, or a liberal employer or a reactionary employer, whether it was favorable to labor or unfavorable to labor, whether it was modern in its plant equipment, or antiquated, or any of those things, any more than the jury is trying to determine whether this union was a good union or a bad union, or whether it was, generally speaking, in favor of labor legislation or against it. The only question that we are determining here is whether the union and these individual defendants were responsible for certain damage that was done, how much that damage was, and that ends the discussion, and there isn't anything, there isn't any other issue before the Court here, and I think that counsel ought to conduct this case with that understanding very clearly in mind. We have no question here of attempting to judge the labor policy of either the union or the employer in this case. The employer may have been entirely wrong about it, they may have been absolutely right. That would not have the slightest effect upon the issue in this case. It is just a question—the evidence shows that certain damage was done; it is simply a question of whether the defendants in this case are responsible and reliable for that damage, or not. There isn't anything else in it.

MR. SYME:

And whether, Your Honor—will you also add—and whether the Court has jurisdiction in

so far as it is a violation of the Sherman Anti-Trust Act.

THE COURT:

Well, if we come to that question, I think the Circuit Court of Appeals has settled that, regardless of any views I might have on the subject.

MR. SYME:

Your Honor, I wouldn't introduce all of this testimony if it were not for the fact that both Mr. Meyer and Mr. Struve and counsel in his introductory address to the jury have tried to give the impression that this company has always bargained collectively,—

THE COURT:

Well, a great deal of that—

MR. SYME:

—with its employees.

THE COURT:

—you didn't object to. Counsel for the plaintiff undoubtedly shoveled a whole lot of stuff in here that was just merely matter of atmosphere, and I would have sustained objection to it right along if it had been made. A great deal of that had to go in, a great deal of what might seem irrelevant matter had to go in in order to determine how far there was union responsibility for the acts which were committed there, and that is the only purpose for which I let any of it in, and a great deal of it probably can be stricken out. I let it all in subject to a motion to strike out, and it seems to me in view of what

I have just said to the jury that we don't need to go along that road any further.

MR. SYME:

Now, Your Honor, I don't want to burden the record unduly with a lot of material, if Your Honor will agree that all of the material or a great deal of the material that Mr. Hirsch has introduced into the record—

THE COURT:

Well, I can't—

MR. SYME:

—with respect to the fairness and justice—

THE COURT:

Of course, I can't—

MR. SYME:

—of the company, and its equitable dealing—

THE COURT:

I think it is utterly immaterial, and I think so far as—

MR. SYME:

If you will entertain a motion on that score that it will be stricken from the record I won't proceed with this cross examination.

THE COURT:

I think unquestionably there is no issue in this case as to the attitude, general attitude, of this company toward labor or toward its own employees.

MR. SYME:

Thank you.

THE COURT:

It is not involved in the case, and the jury surely understands from what I say that that is the situation. We are not in the least bit interested in judging the labor dispute that existed out there. That is not what we are here for, and I can't make it much clearer that that is what I think about it.

MR. SYME:

That is all.

JOHN HARTUNG, having been duly sworn, was examined and testified as follows:

Direct Examination

BY MR. HIRSCH:

Q. Now, Mr. Hartung, will you keep your voice up? You are an employee of the Apex Hosiery Company?

A. Yes, sir.

Q. And immediately following the sit-down strike which took place on May 6th, 1937 did you come to the premises every day, and if so, for what purpose?

A. Watch them.

Q. You were a watchman on the property?

A. Yes, sir.

Q. And you were a day watchman or a night watchman?

A. Day watchman.

Q. And when you came to enter the premises who

had to leave you in? Were you able to go in without anyone's permission?

A. No, the sit-downers were at the gates to leave you in.

Q. And they also left you out?

A. Yes, sir.

Q. Now, while you made your rounds as watchman were you able to make them as freely as you cared to, or were you under any restraint?

A. First week I was left go around by myself, and thereafter I had a man with me.

Q. And was that man one of the sit-downers?

A. Yes, sir, different men, not each the same one every day, but different men.

Q. And when they went with you did they carry anything that you noticed?

A. Well, they carried clubs, and they carried pieces of pipe, and such things like that.

Q. While they accompanied you on your rounds?

A. Yes, sir.

Q. Now, did you actually see any of the machinery being smashed during the period of the sit-down?

A. Well, I saw one on the sixth floor.

Q. Actually being smashed?

A. Well, that was the needle bars, knocking the needles out of the needle bars. I didn't see really the machine being smashed, but just the needle bars.

Q. What was the person doing, and who was the person?

A. William Kline.

Q. Was he one of the sit-downers?

A. Yes, sir.

Q. And what did you see him doing?

A. Well, it was like as if he had a screw driver

in his hand and a hammer, and go over along the tops of the needles, crushing them.

Q. What was the effect of what he was doing on the needles?

A. Well, it twisted all the needles up, instead of being in line the way they should be.

Q. Now, did you ever see Mr. Leader on the premises?

A. Yes, sir.

Q. Do you know him when you see him?

A. Well, I don't know as I would, any more.

Q. You saw him at that time?

A. Yes, sir.

Q. Who else did you see on the premises representing the union?

A. Well, I know Mr. O'Driscoll, and there is two more I don't know, what their names were.

Q. How often did you see O'Driscoll?

A. Well, pretty regular.

Q. Do you recall damage to the machines occurring some time in the forepart of June, around June 10th, some machines being damaged?

A. Well, I never seen any of them being damaged, or anything like that.

Q. Did you see them after they were damaged?

A. Yes, sir.

Q. How soon?

A. Tonight, leaving for home, things were this way,—

Q. What do you mean by "this way"?

A. Why, decent.

Q. Yes.

A. Tomorrow morning I would find, when I was making the first round again, that things were de-

stroyed at places where they were in better condition before.

Q. Now, with reference to the damage in June what did you find destroyed? I mean, just generally speaking, how many machines do you recall?

A. Oh, I wouldn't be able to say. There was lots of them that I seen, but there was one in particular on the fifth floor that had the carrying arms knocked off, and everything else.

Q. And that was during the period of the sit-down strike?

A. Yes, sir.

Q. Now, those same machines that you saw damaged on one day were not damaged the day previously?

A. No, sir.

Q. And when you made your rounds you observed the condition of the machines?

A. Yes, sir, they were right in my line of walk, I couldn't help but notice it.

Q. Therefore, if they were damaged it had to be at night, is that true?

A. Yes, sir.

Q. What else did you see with reference to the silk on the machines, if anything, while making your rounds?

A. Well, the cases on the end of the machine, where the silk was in, it was—looked like it was all unravelled and dragged over the full length of the machine, all over, two of them that I know of.

Q. Did you notice anything else in so far as damage is concerned to the machines or otherwise?

A. Well, I noticed a good bit of damage done around, not just so much to the machines, I noticed

in the office that the desks and things were tore open, and looked as if they were pried open.

Q. Did you have occasion to make rounds after the sit-downers evacuated the place—

A. Yes, sir.

Q. —on June 23rd? Did you notice any additional damage to machines then?

A. No.

Q. What floors did you go on?

A. All of the floors, but I went through the main aisle, I didn't get into the machines.

Q. I see.

A. Several on the third floor that I know of, though.

Q. But you were there merely as a watchman for fire purposes, is that correct?

A. Yes, sir.

Q. And you made your rounds and checked over the clock?

A. Yes, sir.

MR. HIRSCH:

Cross examine.

Cross Examination

BY MR. SYME:

Q. The only machine that you actually saw damaged by a sit-downer was one machine, is that right?

A. Yes, sir.

Q. You didn't see any of the others?

A. That is all I seen.

Q. Did you say anything to the sit-downer?

A. No, no.

Q. You didn't?

A. No, indeed.

Q. Why didn't you?

A. Well, I was alone.

Q. Wasn't he alone?

A. Wouldn't do no good to say anything to anybody that would knock you flat on the floor right afterward, would it?

Q. Was he alone?

A. Me?

Q. Was he alone?

A. Oh, no, there was two others with him.

Q. Do you know the two others?

A. And several more running over the floors.

Q. Do you know the others?

A. No, I wouldn't know them.

Q. You don't know the others?

A. I couldn't place them now.

Q. Was this Kline a former employee—or, an employee of the Apex Hosiery Company?

A. Oh, yes.

Q. You knew him as an employee. You didn't know whether he was a member of the union or not, did you?

A. Oh, no, I didn't know who was members of the union.

Q. How often did you make your rounds around the plant?

A. Five times a day.

Q. Five times a day. After you left the plant you didn't know whether anybody might come in aside from the sit-downers, there might be other people coming into the plant, isn't that right?

A. Oh, I knew nothing about after I left.

Q. Yes, so that when you say you would leave the machines in one condition the night before and

come back the next morning and find them in a different condition, you don't know who was responsible—

A. Oh, no.

Q. —for that different condition? That is all. Just one minute.

You have testified to the fact that you saw Leader in the plant?

A. Yes, sir.

Q. When did you see him?

A. Oh, I couldn't say, maybe two or three weeks after the strike was on.

Q. Two or three weeks after the strike. How did you know it was Leader?

A. I couldn't help it, they were all applauding and cheering, standing up on top of tables and everything, making a big noise, I couldn't help but hear it.

Q. That was about two or three weeks after that. How long did Leader stay?

A. Oh, I don't know, I never mixed with them much, never bothered with them much, while I was going there, that is all I seen.

Q. You don't know what Leader said,—

A. No.

Q. —do you?

A. I do know that he said, though, that they should go to work and stick there and fight it out with Mr. Struve, that I know. I heard that much when I was passing by.

Q. About what time was that?

A. Two o'clock in the afternoon.

Q. Two o'clock in the afternoon, and then you left, and you don't know how long he stayed, is that right?

A. No, I went down to the other end and stayed until I would start again.

Q. Yes.

A. I went and made a round this hour, and the other man made a round the next hour.

Q. No, but I mean, how long did Leader stay after that?

A. Oh, I don't know, he was in quite a while.

Q. Did you see him again after that?

A. Yes, sir.

Q. When was that?

A. Oh, I couldn't tell you—while the strike was on.

Q. While the strike was on. Did you see him again?

A. And then after the strike was settled he came to the gate entrance when I was leaving.

Q. And that was after the strike was over?

A. Well, I don't know as it was over. They didn't start to work yet, but the men were outside.

Q. Yes, but the men were outside and the people were—there were no sit-downers any more, isn't that right? All in all, then, you saw Leader in the plant during the period of the strike twice, is that right?

A. Well, I would say three times, anyhow.

Q. When did you see him again?

A. After he come in and had a confab with Mr. Struve.

Q. Yes.

A. That is all I seen of him.

MR. SYME:

That is all.

JOSEPH SMITH, having been duly sworn, was examined and testified as follows:

Direct Examination

BY MR. HIRSCH:

Q. Mr. Smith, you are an employee of the Apex Hosiery Company?

A. Yes, sir.

Q. For how many years?

A. Going on ten years.

Q. And prior to May 6th what was your position?

A. Cleaning gang foreman.

Q. And after May 6th what was your job?

A. Watching the third, fourth, fifth and sixth floors in case of fire.

Q. You were a fire watchman, so to speak?

A. Yes.

Q. And were you there at night or during the day?

A. During the day.

Q. Were you there when the crowd broke in on May 6th?

A. I was.

Q. Did you see William Leader, the president of the union?

A. Yes.

Q. Where did you see him?

A. Standing on top of the table in the wareroom on the first floor.

Q. What was he doing?

A. Why, he was addressing the crowd.

Q. I show you a photograph which has been offered in evidence as Plaintiff's Exhibit 8 and ask

whether or not your picture appears in that photograph, and if so, where.

(The witness examined the photograph.)

A. Right here (indicating).

MR. HIRSCH:

I will put the letter "S" on his white shirt.

BY MR. HIRSCH:

Q. Where I placed the "S", that is your picture,—

A. Yes.

Q. —is that correct?

A. That is it.

MR. HIRSCH:

Just so when you look at this picture, that is the individual, where the "S" is.

(Exhibit P-8 was shown to the jury.)

BY MR. HIRSCH:

Q. What happened to you on May 6th?

A. Why, when the crowd broke in I cut down the steps to go down to the office, and they were all surging around me, everything was mixed up, I was hit in the leg.

Q. Did it cripple you in any way?

A. I had a lump about two weeks afterwards.

MR. SIMONS:

If Your Honor please, I think we have gone into that. That is not—

THE COURT:

Yes, all right.

MR. SIMONS:

It has nothing to do with the facts in this case.

BY MR. HIRSCH:

Q. Did you hear Leader make any statement that day when you were in the wareroom?

A. Yes.

Q. And to whom did he make it, the people that were gathered around there?

A. The people that was gathered around.

Q. At that time was he up on the table?

A. He was standing up on the table.

Q. What do you recall hearing him say, if anything?

MR. SYME:

Your Honor, if it is a matter of expediting this thing I am willing to stipulate that Leader was there and that Leader made a statement to the people. It has been testified to by other witnesses.

MR. HIRSCH:

If he will agree that this man's testimony would be the same as Miss Dorwart's, if he testified, I will agree to let it go at that.

THE COURT:

Well, ask him one question—

BY THE COURT:

Q. What did you hear Leader say?

A. Why, I heard him say that the union had taken possession of the place and they wouldn't sign up until it was a closed shop.

Q. All right.

A. And they put a man by the name of Bill Etter as chairman, and the union was going to bring in cots and eats.

BY MR. HIRSCH:

Q. Now, then, following the commencement of this sit-down, and coming down to the month of June, when you made your rounds did you find any damage to the machinery on any particular date that you recall?

A. Why, I was there early in June, I guess it was June the 10th.

Q. And what did you find on that day?

A. Two footers were damaged, the needle bars, and twenty-eight leggers, on the fourth floor.

Q. Where were the footers located?

A. Right near the entrance of the door on the third floor.

Q. And the leggers?

A. They were scattered all around on the fourth.

Q. And they were damaged?

A. They were damaged.

Q. Were they damaged in a manner that would have prevented them from being operated?

A. Oh, they couldn't operate under no condition.

Q. Were they damaged the day before when you made rounds on the same floors?

A. No, I didn't see them.

Q. Now, after the sit-downers took possession of the property did you have any trouble getting in and out when you came there each day to work?

A. Well, I had to wait until I got in. There is one day I had trouble, they wouldn't let me in.

Q. Who wouldn't?

A. Why, the men that had possession of the keys at the door. It seemed that somebody had been oiling the needle bars up, and it was blamed on me, and they were going to keep me out for doing that, but it was finally passed, they had a meeting, and they left me in at the office, and from then on I had two men and one man going around with me at all times making the rounds.

Q. And what did they have with them?

A. They generally had a stick or a piece of pipe with them.

Q. In making your rounds did you ever see any of the sit-downers taking care of the machines and trying to keep them in good state of repair?

A. No, I never did.

Q. Now, what was the condition of the broken windows during this period? I mean, were they repaired during the period the sit-downers were on the premises, or were they left in their damaged state?

A. They were left the way they were.

Q. And the windows that were broken on May 6th remained broken throughout the sit-down strike?

A. Yes.

Q. And as a result of that, what, if anything, did you notice happen to machines when you were making your rounds?

A. Why, it was always damp and rusty.

MR. HIRSCH:

Cross examine.

BY THE COURT:

Q. Were you told by the men in the plant not to fix the machines?

A. They told me—the sit-downers told me to keep my hands off of everything. I wasn't even allowed to wipe up a little pool of oil, which I generally do.

THE COURT:
All right.

Cross Examination

BY MR. SYME:

Q. When you say the sit-downers, who among the sit-downers, who told you?

A. The sit-downers that were in the mill.

Q. Well, who,—

A. Oh, I don't know their names.

Q. —particularly? You know all these men, don't you?

A. I know them by their faces. I don't know all their names.

Q. Well, can you identify who among them? You say you have been working for Apex for ten years, and they are all Apex employees; don't you know them by name?

A. I know their faces. There is plenty of men I don't know their names, I know their faces.

Q. You say the man generally had a stick and a bar. Was the same man following you all the time?

A. No.

Q. Different men?

A. Different men.

Q. And you mean to say that before a man would start following you he would pick up a stick or pick up a bar and then he would go with you, is that right?

A. Well, as a general rule they had a stick or a bar with them, or a piece of pipe.

Q. Pick up a piece of pipe or a stick or a bar, and otherwise he wouldn't move to follow you, is that it?

A. That was, yes.

Q. How many men followed you at one time?

A. One and two times—one and two of them at all times.

Q. One and two, and two of them would go at the same time, and they would have a stick and a bar or a pipe, is that it?

A. Yes, they would have a stick and a bar or pipe.

Q. You weren't the machine fixer, were you?

A. No.

Q. You aren't a machinist, you aren't qualified to repair machines, are you?

A. Oh, no.

Q. It wasn't your duty or obligation to look after machinery, was it?

A. I could have oiled them up.

Q. Yes, but that is not your obligation, you are essentially a watchman, isn't that right?

A. Yes.

MR. SYME:

That is all.

MR. HIRSCH:

Now, for the purpose of saving time, if Your Honor please, with the agreement of counsel for the defendants, I will read into the record the names of other watchmen who if called would testify to a generally similar effect, without admitting that they would testify to the speech that this particular witness heard Leader make.

THE COURT:

Well, as I understand it from what you said before we came into court, they would testify that they were permitted to come upon the premises for the purpose of their duties as watchmen, but were at all times followed and accompanied by members of the sit-down body or the men who were in the plant, and that is all, they didn't have free egress and ingress.

MR. HIRSCH:

That is right, couldn't get in or out without the sit-downers.

MR. SYME:

I will stipulate that they would testify as to that.

THE COURT:

Yes.

MR. SYME:

Subject, of course, to a defense.

MR. HIRSCH:

May I put these names on the record: Carl Keufhus, Fritz Keufhus, Michael Kronby, Gottlieb Kleinknecht.

Herbert Hahn, will you come forward, please?

HERBERT HAHN, having been duly sworn, was examined and testified as follows:

Direct Examination

BY MR. HIRSCH:

Q. You are employed by the Apex Hosiery Company, Mr. Hahn?

A. Yes, sir.

Q. And for how many years have you been employed by that company?

A. Well, since 1921.

Q. And what is your position there?

A. Chief engineer.

Q. And were you chief engineer on May 6th, 1937?

A. I was.

Q. And did you continue as chief engineer during the period of the sit-down strike?

A. I did.

Q. It was your duty to keep the boilers going in order that the pressure would be in the mains for fire protection purposes, was it not?

A. Yes, sir, that is right.

Q. Was any of the machinery being operated during the period—

A. No.

Q. —of the sit-down strike?

A. No.

Q. And while you were there, were you there every day?

A. Every day.

Q. And was the company able to ship finished merchandise—

A. No.

Q. —during the period of the sit-down?

A. No.

Q. Now, where is your office located with reference to the back or side of the building?

A. My place is on the back, on Luzerne Street, on Luzerne—or, not Luzerne, on Rising Sun, excuse me, on Rising Sun Avenue.

Q. And the yard which has been referred to in the testimony of other witnesses, where the sit-downers played ball, is just outside your office?

A. Just right outside there, yes, all the way to Luzerne Street it runs.

Q. Now, you were in the plant on May 6th when the mob broke in?

A. Yes, yes.

MR. HIRSCH:

And I suppose Mr. Syme will agree that as to those details his testimony would be similar to other witnesses, and I will pass that by. Is that right?

MR. SYME:

That is all right.

BY MR. HIRSCH:

Q. Now, prior to May 6th who had charge of the back gate?

A. The sit-downers.

Q. No, prior to May 6th.

A. Oh, prior, before that, fellow by the name of Bill Matten and me. See, I look after it while he was away, during the day.

Q. Now, after May 6th and during the period of the sit-down strike was this Billie Matten or yourself, were either of you in charge of the back gate?

A. No, we were relieved of it altogether, because they even put their own locks on.

Q. Who put their own locks on?

A. The sit-downers.

Q. Did you have a key to those locks?

A. No, positively not.

Q. And prior to May 6th did you have a key to the locks?

A. No.

Q. Prior to May 6th; before May 6th.

A. Oh, yes, before I did, yes. Yes, right after that, it was no good, there was a different lock on.

Q. When you came to the mill each day who let you in?

A. Why, the sit-downers, but I had an awful time getting in, always, they would go through my lunch, look what I had, go through my clothes, and when I went out they done the same thing, but I managed to get in all right, Mr. Hirsch.

Q. Did you observe where the sit-downers slept while they were in the premises?

A. No, that I couldn't say, no. See, I was in my own place, I didn't bother through the mill.

Q. What about food for the sit-downers, did you ever see that?

A. Oh, that come in on Rising Sun Lane.

Q. That was through your office?

A. No, not through my office, through that gate next to my place.

Q. Could you see it come in?

A. Oh, very easily, yes.

Q. How often?

A. Oh, about three times a day.

Q. Now, during the period of the sit-down strike, while the sit-downers were on the property, did the

management or the officers of the company, as far as you could see, have anything to say about the mill? Were they in the mill?

A. What do you mean, when the sit-down was?

Q. Yes.

A. Positively not.

Q. Who was in complete charge?

A. Why, the sit-downers.

Q. Now, directing your attention to the question of smashed machinery on the property, what, if anything, did you ever hear while you were on the property about that?

A. Well, I will tell you, one time I overheard a remark—

MR. SIMONS:

Now, wait, if Your Honor please, I don't know what is following, but that is certainly going into some hearsay testimony.

MR. HIRSCH:

I will first—

MR. SIMONS:

I think that is objectionable.

MR. HIRSCH:

I will first show from whom these remarks came.

THE COURT:

All right.

BY MR. HIRSCH:

Q. Who did you hear? Don't tell us what you heard, yet,—

A. No.

Q. —from whom did you hear whatever you are going to relate?

A. From the sit-downers.

Q. How many of them?

A. Oh, a whole bunch out there, I couldn't tell you who they were or anything else.

Q. Now, when you say "sit-downers", were they men whom you saw on the property—

A. On the property.

Q. —all the time?

A. Positively, right in the yard, right by my place there.

Q. And prior to this time when you heard the conversation or statement that you are going to make—

A. Yes.

Q. —were they on the property?

A. They were on the property, positively.

Q. And afterwards, too?

A. And afterwards, too.

Q. And you are able to identify them as sit-down strikers.

A. Oh, yes, yes, that I am.

MR. HIRSCH:

Well, now, before you make any statement,—

THE WITNESS:

Yes.

MR. HIRSCH:

—because I think the witness has now sufficiently identified the persons to permit him to relate what he heard them say, the question of naming the persons is unimportant if you show the capacity of the persons, who they were, or

to what group they belonged. Now, I admit that if this conversation was outside the mill with four unknown persons it would be different, but he identifies them as being in the mill, and it will directly concern something that happened in the mill.

MR. SIMONS:

Well, I object to that, if Your Honor please. I don't know who these persons were. I don't know what this witness is going to testify to, or what they have said, but if it is a question of finding the defendants in this case I think that you will have to show something more than there merely being sit-downers, and it is also a question whether they had been all the time, if there had been all this coming in or going out. I don't know what the procedure was.

THE COURT:

I don't know what the remark was. I guess we will have to—

MR. SIMONS:

I don't either. That is the reason I am objecting now, before it gets to the record.

THE COURT:

If you want to make an offer at side bar I can rule more intelligently. I don't know.

MR. HIRSCH:

All right, will you come up?

(The following occurred at side bar:

MR. HIRSCH:

I offer to prove by this witness that the sit-downers substantially said the following—

THE COURT:

All right, go ahead.

MR. HIRSCH:

—"If we can't work, we are going to smash these machines".

THE COURT:

What?

MR. HIRSCH:

"If we can't work, we are going to smash these machines." Now, I submit, Judge Kirkpatrick, that these people were the agents of the union and in possession of the place, and their remark, therefore, would bind the union.

MR. SIMONS:

No, I don't think that you can merely because an agent will take it upon himself to do that, say something, that you can bind the principal with it—

THE COURT:

Do you object to it?

MR. SIMONS:

I certainly do.

THE COURT:

I will sustain the objection.)

BY MR. HIRSCH:

Q. Do you know Mr. O'Driscoll, or Mr. Leo Driscoll, when you see him?

A. I know him when I see him, yes.
Q. Is he in the court room?
A. Yes, right down there (indicating).
Q. Did you ever see him around the plant of the Apex Hosiery during the sit-down?
A. Saw him there every day, I suppose every day.

MR. HIRSCH:
Cross-examine.

MR. SYME:
No questions.

MR. HIRSCH:
No questions. Thank you, Mr. Hahn.

FREDERICK W. KOELLE, having been duly sworn, was examined and testified as follows:

Direct Examination

BY MR. HIRSCH:
Q. Mr. Koelle, you are an employee of the Apex Hosiery Company?
A. Yes, sir.
Q. And for how many years have you been an employee of that company?
A. Since 1920.
Q. And what is your position with the company?
A. Paymaster.
Q. And as paymaster have you come in contact with the employees?
A. Yes, sir.

Q. And do you know most of the employees of Apex on sight if not by name?

A. Yes, sir.

Q. Have you been in court when other witnesses have testified to the events that occurred prior to and on May 6th, 1937?

A. Yes, sir.

Q. Did you see Mr. Leader on May 6th, 1937?

A. Yes, sir.

Q. Where?

A. In front of the Apex, at the entrance of the Apex.

Q. Was this prior to the time the crowd broke in?

A. Yes, sir.

Q. And what, if anything, did you see him do or hear him say?

A. He was knocking on the door wanting to be admitted into the office, and after that I heard him declare a strike and a sit-down.

Q. And then what happened?

A. Bricks began to fly, and general confusion after that.

Q. And your testimony along the lines as to what happened after that would be similar to the testimony of other witnesses—

A. Yes, sir.

Q. —if you were asked. I show you one of the photographs that has already been offered in evidence as Plaintiff's Exhibit number 2, in which there appears to be overturned desks and papers strewn about the floor, and one person in the photograph. Whose photograph is that?

(The witness examined the photograph.)

A. That is myself.

BY MR. HIRSCH:

Q. Now, after the place had been broken into did you see William Leader?

A. I did, I saw he and Mr. Syme come out of Mr. Meyer's office and walk out into the wareroom.

MR. HIRSCH:

I think at that time, if Your Honor please, I would like to make a statement, in fairness to Mr. Syme, who is trying this case against me. The references by the witness to Mr. Syme being there—it is admitted, I think Mr. Syme admits that he was on the property, but it is not our case, we are not proving, nor do we intend to show, nor do we claim that Mr. Syme was outside the mill before the mill was broken into—

THE COURT:

All right.

MR. HIRSCH:

—and that he participated in the breaking in. Our information is that Mr. Syme was called up at his office after the mill was broken into and told to come up there, possibly for the purpose of trying to negotiate an agreement or otherwise, and he came on the property as far as we know, after the mill had been broken in.

THE COURT:

All right.

MR. HIRSCH:

I say that—

THE COURT:

Well, that is correct, Mr. Syme, is it?

MR. SYME:

Yes, that is true, I was called by my client and informed that there were several arrests—

THE COURT:

Yes.

MR. SYME:

—and that there was a possibility of a conference, to which Mr. Leader will testify. That is why I haven't objected,—

THE COURT:

All right.

MR. SYME:

—although I appreciate the courtesy of Mr. Hirsch in making that statement.

THE COURT:

All right, it is a very proper statement to make.

BY MR. HIRSCH:

Q. Now, did you see the sit-downers after they took possession of the property?

A. Yes, sir.

Q. How often were you up there, and for what purpose?

A. I was there the full day of May 7th, from around half past eight in the morning to five o'clock at night. I was there the following day from half past seven to twelve. At that time our office was located at Fourth and Green, the Integrity Trust, and for payroll records, Social Security cards, and

so forth, I had to make several trips up to the mill, to get those records.

Q. And you saw the sit-downers on those occasions?

A. Yes, sir.

Q. Approximately how many were there in the plant?

A. About 175.

Q. And did you recognize them?

A. Yes, sir.

Q. Were they Apex employees?

A. Yes, sir.

Q. Without doing so, could you name them, or a number of them?

A. I could name some of them, yes.

Q. Would you be able to recognize them, if—

A. I think so.

Q. —necessary?

A. I think so.

Q. Now, referring your mind back to May 6th, 1937, did you see Mr. Leader with the sit-downers?

A. No, sir.

Q. Did you see the cots or blankets that have been referred to?

A. I saw cots and blankets brought in on the Luzerne Street entrance.

Q. When was that, on May 6th?

MR. SYME:

Your Honor, I don't want to object,—

A. About six o'clock.

MR. SYME:

—but it is all cumulative.

MR. HIRSCH:

All right.

MR. SYME:

It has all been testified to, and in line with our conversation I don't think it is necessary.

BY MR. HIRSCH:

Q. Was Mr. Leader still on the premises when the cots and blankets were being brought in?

A. That I don't know.

Q. Now, when after May 6th did you go on the property?

A. Friday, the day following.

Q. And did you see Leader there on that day?

A. I did.

Q. Under what circumstances? What transpired on that day?

A. Mr. Steeple and I were told to go in the next day to handle any telephone calls, in fact, the whole office force went in, the rest of them were sent home, and Mr. Steeple and myself were asked to stay there to handle any telephone calls that would come in from employees asking various questions, and so forth, which we did. Around ten o'clock in the morning, I think it was, it was mid-morning, Mr. Stout, who had charge of the—of the place there the night before, came in and said that he would like to put a call through to Mr. Leader.

Q. Do you know his position in the union?

A. Well, I don't know his exact position. I think he is an organizer, or was at that time.

Q. Go ahead.

A. He told me that he couldn't control the boys out in the mill and he wanted to talk to Mr. Leader and have him come up. Mr. Stout at that time, we

got the telephone call through to the union, and Mr. Leader I think was on there and—

MR. SIMONS:

If Your Honor please, I think the conversation, the telephone conversation, would be objectionable.

THE COURT:

Well, you can tell what you heard Stout say.

MR. HIRSCH:

Well, we will go further than that, if the witness is permitted. The witness talked to him himself on the phone.

MR. SIMONS:

Well, I don't know that.

A. (Continued) I asked Mr. Stout whether he had a contact with Leader, and Mr. Stout told me that Mr. Leader didn't have any time to come up, or to that effect, and I said, "Well, would it be any good if I talked to Leader?", and he says, "Yes, go ahead", so I talked to Mr. Leader and told him that—what Mr. Stout had said, and asked him to come up.

BY MR. HIRSCH:

Q. Did he?

A. He did.

Q. That was on May 7th?

A. That was on May 7th, that was on Friday, yes, sir. He came in and went out in the wareroom.

Q. Who was out in the wareroom?

A. Well, the sit-downers were out there. Of course, I stayed in the office.

Q. Now, did you personally observe where the sit-downers were sleeping?

A. They were sleeping all over the mill. I saw some in between the machines and some at the exit doors. We had understood that they wouldn't go above the third floor at that time, but I found some of them on the fifth and the sixth.

Q. What other representatives of the union did you find or see on the premises of Apex during the period of the sit-down strike when you visited the plant?

A. Well, Mr. Stout, as I said before. Mr. Leo Driscoll was there every time.

Q. That is the gentleman—

A. Every time I came up there, anyhow.

Q. That is the gentleman here (indicating)?

A. That is the chap sitting on the first row.

Q. Now, what, if anything, did you notice about the locks on the various entrances to the place?

THE COURT:

Oh, that has been proved so many times.

MR. HIRSCH:

All right.

BY MR. HIRSCH:

Q. Did you sign any kind of a card on May 6th, 1937?

A. I did.

Q. Was the card which you signed similar to the card, Plaintiff's Exhibit number 9, which I show you?

(The witness examined the card.)

A. That was the card I signed.

BY MR. HIRSCH:

Q. Did you sign that willingly or unwillingly?

A. Unwillingly.

Q. Was that signed when the crowd was on the premises?

A. Yes, sir, directly after the bunch of us come from the sixth floor, as was testified this morning.

Q. And what happened to the card after you signed it?

A. Well, as we come down the steps I met this Bill Etter. Of course, he is an employee—

Q. Oh, I meant to ask you, who solicited the—

A. Mr. Etter.

Q. He was the one who asked you?

A. He handed me the card and said it had to be signed.

Q. And who was William Etter insofar as the sit-down strike was concerned?

A. Well,—

Q. After it got under way what was his place in the strike?

A. I know this, that whenever I contacted the mill, that is, when I was sent up to get additional records, I always had to contact Mr. Etter as chairman of the shop, or chairman of the sit-down, whatever you want to call it.

Q. And it was this same person who insisted that you sign this pledge card, Plaintiff's Exhibit number 9?

A. Yes, in fact, I only put my first name, "Fred" on it, and he says, "Come on, Fred, sign it all, we know you."

Q. And did he take it away with him after you signed it?

A. He did.

MR. HIRSCH:
Cross examine.

MR. SYME:
No questions.

THE COURT:
We will recess for ten minutes.

(Recess at 3:20 o'clock P. M.)

LEO O'DRISCOLL, having been duly sworn, was examined and testified as follows:

BY MR. HIRSCH:

Q. You are a member of the defendant union, and have been for a number of years, are you not?

A. Yes, sir.

MR. HIRSCH:
I call this witness, therefore, as for cross examination.

Cross Examination

BY MR. HIRSCH:

Q. You have been a member for fifteen years?

A. Yes, sir.

Q. You recall giving a deposition in my office pursuant to the rules of this court some time in December of 1938?

A. Yes, sir.

Q. I am correct, am I not, in saying that you

testified that you were one of the union organizers seeking to enroll employees of the Apex Company, and that that was your job?

A. Not the Apex Company.

Q. But seeking to enroll members?

A. Member of any company—

Q. Including Apex?

A. —making hosiery.

Q. Including Apex?

A. Including Apex.

Q. I asked you at that time, and see if you recall it, the following question:

> "Q. But particularly, you were one of the union organizers seeking to enroll in the membership of your Union, employees of the Apex Hosiery Company?", and you answered,
>
> "A. That was my job."

A. As an organizer I was to organize any open shop that I could collect membership.

Q. But you were put in charge, or, at least, you were designated as an organizer for the Apex shop?

A. Not in charge—an organizer.

Q. But you were an organizer at the Apex shop?

A. Correct.

Q. Now, in addition to the solicitation of membership you also participated in various conferences that took place between the union representatives and management during the period May 6th down to July 29th, 1937?

A. As an observer.

Q. Isn't it a fact that you attended those conferences as a representative of the union and that you so testified?

A. As an organizer and an observer.

Q. I read you the following question and answer which you gave—page 51—and ask whether or not this is correct, when you so state in your deposition under oath on December 2nd, 1938:

> "Q. And you attended these conferences as a representative of your union, together with Mr. Leader?
>
> "A. As a representative, and as an observer, to know just what the plans of settlement were for the benefit and information of anybody wanting to know."

A. Well, that is more or less what I mean now. I mean to say, that is what I meant at that time.

Q. What you said now is what you mean to say now?

A. That is right.

Q. All right. You were also a trustee of the union, were you not?

A. I didn't serve as a trustee while holding the organizer's position.

Q. You had served as a trustee of the union?

A. Previous to the—in fact, I was an organizer and a trustee at that particular time, but not functioning as a trustee.

Q. Now, a trustee is a person designated by the union membership to represent it in the distribution of strike benefits and funds to persons who are on strike in the various mills in Philadelphia, is that substantially correct?

A. A trustee is elected by our organization, but where the distribution of funds, in the case of strikes or anything that may arise, to where funds

are to be spent, usually trustees, being responsible for funds, are placed in charge of the expenses.

Q. And the trustee is given a lump sum of money to distribute among the strikers of a particular mill in such amounts as he sees fit, wasn't that your testimony?

A. No.

MR. SYME:

Your Honor, I object. Mr. O'Driscoll has testified to the fact that he was not a trustee during the period; he was an organizer.

THE COURT:

He said he was a trustee but not functioning as such. I don't know what that means.

MR. SYME:

Well,—

THE COURT:

It doesn't matter. He was a trustee at one time. He knows what trustees' duties are. That is all he is being asked now.

MR. SYME:

There is no doubt of that. The only thing is, I don't see how a trustee becomes relevant insofar as Mr. Driscoll is concerned if he wasn't functioning as one.

THE COURT:

Well, I don't know, but Mr. Hirsch is only asking him what the general function of a trustee is. He is competent to answer that.

MR. SYME:

I object to the line of examination because it is irrelevant.

THE COURT:

I will overrule the objection.

BY MR. HIRSCH:

Q. Was one of the general functions of a trustee the distribution of strike benefits on behalf of the union?

A. Strike benefits were usually—for instance, when a strike was called, past acts of our organization being as to where we assess ourselves whatever percentage that the membership deem necessary, and it is divided in proportions, depending on what benefits may be required within the strike.

BY THE COURT:

Q. Well, who decides that?

A. The membership usually makes the assessment, maybe one per cent, or two per cent, whatever it may be. The fund is turned over to the trustees, it is turned over in banking form, and we draw checks weekly at—sometimes the designation of the membership, they decide what the group should get; other times it was left to the discretion of the trustees.

THE COURT:

All right.

BY MR. HIRSCH:

Q. But the trustees did the actual distribution of the funds, they were the ones who distributed the money after the union or the trustees had decided

how much each person was to get as a strike benefit?

A. That is right.

Q. Now, it is a fact, is it not, that strike benefits were paid by your union to the sit-down strikers at the Apex plant?

A. We didn't recognize it as strike benefits. We recognized it as a form of relief.

Q. Call it what you will, payments of money were made by your union to the sit-down strikers on the Apex plant during the period of the strike, were they not?

A. Correct.

BY THE COURT:

Q. From the union funds?

A. From the union.

BY MR. HIRSCH:

Q. And I believe you testified that the trustees would keep records of the persons to whom these benefits were paid, and would get receipts from them?

A. That is right.

MR. HIRSCH:

Will the union, pursuant to the subpoena that was delivered, produce the receipts of the various sit-down strikers at the Apex? Do you have them?

MR. SIMONS:

I think we explained to you, Mr. Hirsch, that we do not have receipts. You have gone through all the records and have gotten all the matters that were material to this issue. You

have gone through all our books and records and had your accountant there checking over the records.

BY THE COURT:

Q. Before you get that, generally speaking, strike benefits are disbursed in the form of checks?

A. No, one check is made out for a lump sum and usually divided in the amount of people that we have.

Q. Well, but, now,—

A. For instance,—

Q. —any individual man, what does he get, does he get cash?

A. Cash, that is right.

Q. And he will get it from one of the trustees?

A. From one of the trustees.

Q. And is that the situation with regard to these payments to the sit-down strikers?

A. That is right.

Q. They were paid in cash?

A. Paid in cash.

MR. HIRSCH:

Well, while we are on that point, there may be a little more continuity; will the union produce or permit me to use photostats of vouchers of account number 620, which in the union records was known as direct strikers payroll?

MR. SIMONS:

If Your Honor please, we are trying to get to some matter of hastening the presentation of the evidence. May we see you at side bar on this thing?

THE COURT:

Yes, surely.

(Discussion at side bar.)

MR. HIRSCH:

I offer in evidence at this time as Plaintiff's Exhibit number 10, twenty photostatic copies of vouchers which counsel for the defendants admits were made from the original vouchers in the files of the hosiery workers' union, pursuant to an order of court permitting us, in accordance with the rules of court, to examine the union's books and records. I offer these exhibits as one exhibit, but there are twenty vouchers in them, and it is agreed by counsel for the defendants that these vouchers reflect or show the periodical payments subsequent to May 6th, 1937 to employees of the Apex Hosiery Company, which payments are both during and subsequent to the sit-down strike; one voucher in particular, that dated June 18, 1937, indicating on its face that the total amount of the check was $3,131.00,—

THE COURT:

There is no reason why you can't hand that to the jury.

MR. HIRSCH:

—$1090.00 of which was to sit-down strikers, and $2041.00 was to outside pickets. I draw your particular attention to that voucher, and you may look at the others; twenty-one vouchers, make that twenty-one.

(The vouchers were shown to the jury.)

THE COURT:
All right.

MR. HIRSCH:
That is all.

THE COURT:
Maybe the other side wants to ask—have you anything?

MR. SYME:
No questions.

THE COURT:
All right.

MR. HIRSCH:
It is agreed—I believe Mr. Simons will concur—that these vouchers are made simultaneously with the typing of the check, and represent a duplicate copy of the check insofar as the name of the payee is concerned and the date and the amount, and at the bottom of the voucher appears the purpose for which that check was drawn. Is that agreed?

MR. SYME:
I told you we will agree to the fact that the union did pay strike benefits to the sit-downers.

MR. HIRSCH:
Now, I am talking about the vouchers in general, how they are made up.

MR. SYME:
That is right.

MR. HIRSCH:
Is that right?

MR. SYME:

Yes.

(Photostatic copy of voucher dated June 5, 1937, of the Full Fashioned Hosiery Workers Union of Philadelphia and Vicinity, to the order of Harry Oehmig, for $4211.50, was marked Exhibit P-10-a.

Photostatic copy of voucher dated June 9, 1937, of the Full Fashioned Hosiery Workers Union of Philadelphia and Vicinity, to the order of Harry Oehmig, for $1101.00, was marked Exhibit P-10-b.

Photostatic copy of voucher dated June 11, 1937, of the Full Fashioned Hosiery Workers Union of Philadelphia and Vicinity, to the order of Harry Oehmig, for $1808.50, was marked Exhibit P-10-c.

Photostatic copy of voucher dated June 18, 1937, of the Full Fashioned Hosiery Workers Union of Philadelphia and Vicinity, to the order of Harry Oehmig, for $3131.00, was marked P-10-d.

Photostatic copy of voucher dated June 25, 1937, of the Full Fashioned Hosiery Workers Union of Philadelphia and Vicinity, to the order of Harry Oehmig, for $3182.00, was marked Exhibit P-10-e.

Photostatic copy of voucher dated July 2, 1937, of the Full Fashioned Hosiery Workers Union of Philadelphia and Vicinity, to the order of Harry Oehmig, for $3280.50, was marked Exhibit P-10-f.

Photostatic copy of voucher dated July 9, 1937, of the Full Fashioned Hosiery Workers Union of Philadelphia and Vicinity, to the order of Harry Oehmig, for $3118.00, was marked Exhibit P-10-g.

Photostatic copy of voucher dated July 16, 1937, of the Full Fashioned Hosiery Workers Union of Philadelphia and Vicinity, to the order of Harry Oehmig, for $2841.50, was marked Exhibit P-10-h.

Photostatic copy of voucher dated July 23, 1937, of the Full Fashioned Hosiery Workers Union of Philadelphia and Vicinity, to the order of Harry Oehmig, for $3200.00, was marked Exhibit P-10-i.

Photostatic copy of voucher dated July 30, 1937, of the Full Fashioned Hosiery Workers Union of Philadelphia and Vicinity, to the order of Harry Oehmig, for $3205.50, was marked Exhibit P-10-j.

Photostatic copy of voucher dated August 6, 1937, of the Full Fashioned Hosiery Workers Union of Philadelphia and Vicinity, to the order of Harry Oehmig, for $3173.00, was marked Exhibit P-10-k.

Photostatic copy of voucher dated August 13, 1937, of the Full Fashioned Hosiery Workers Union of Philadelphia and Vicinity, to the order of George Braig, for $3091.50, was marked Exhibit P-10-l.

Photostatic copy of voucher dated August 19, 1937, of the Full Fashioned Hosiery Workers Union of Philadelphia and Vicinity, to the order

of Harry Oehmig, for $2978.00, was marked Exhibit P-10-m.

Photostatic copy of voucher dated August 27, 1937, of the Full Fashioned Hosiery Workers Union of Philadelphia and Vicinity, to the order of Harry Oehmig, for $3105.00, was marked Exhibit P-10-n.

Photostatic copy of voucher dated September 3, 1937, of the Full Fashioned Hosiery Workers Union of Philadelphia and Vicinity, to the order of Harry Oehmig, for $1468.50, was marked Exhibit P-10-o.

Photostatic copy of voucher dated September 9, 1937, of the Full Fashioned Hosiery Workers Union of Philadelphia and Vicinity, to the order of Harry Oehmig, for $880.50, was marked Exhibit P-10-p.

Photostatic copy of voucher dated September 20, 1937, of the Full Fashioned Hosiery Workers Union of Philadelphia and Vicinity, to the order of Harry Oehmig, for $1059.00, was marked Exhibit P-10-q.

Photostatic copy of voucher dated September 24, 1937, of the Full Fashioned Hosiery Workers Union of Philadelphia and Vicinity, to the order of Harry Oehmig, for $426.00, was marked Exhibit P-10-r.

Photostatic copy of voucher dated September 30, 1937, of the Full Fashioned Hosiery Workers Union of Philadelphia and Vicinity, to the order of Harry Oehmig, for $421.00, was marked Exhibit P-10-s.

Photostatic copy of voucher dated October 7, 1937, of the Full Fashioned Hosiery Workers Union of Philadelphia and Vicinity, to the order of Harry Oehmig, for $163.50, was marked Exhibit P-10-t.

Photostatic copy of voucher dated October 14, 1937, of the Full Fashioned Hosiery Workers Union of Philadelphia and Vicinity, to the order of Harry Oehmig, for $213.00, was marked Exhibit P-10-u.

Copies of these vouchers follow:

Exhibit P-10-a

"FULL FASHIONED HOSIERY WORKERS
UNION OF PHILADELPHIA
AND VICINITY

PHILADELPHIA, PA. June 5, 1937

PAY TO THE
ORDER OF Harry Oehmig $4211.50
DOLLARS

Payment authorized By
Extensions checked By
Entered Folio By M. McC

Examined and approved
By /s/ Marge Given Auditor

For the Board of Trustees

Date	Purpose of Payment	Amount as Rendered	Deductions	Net Amount	Classification of Account
	STRIKE PAY.				
	Apex	2307.50			
	Artcraft	1904.00			
				$4211.50	

620
✓

NO. 1739
✓

Exhibit P-10-b

FULL FASHIONED HOSIERY WORKERS
UNION OF PHILADELPHIA
AND VICINITY

PHILADELPHIA, PA. June 9, 1937

PAY TO THE
ORDER OF Harry Oehmig $1101.00
DOLLARS

Payment Authorized By
Extensions Checked By
Entered Folio By M. McC

Examined and Approved
By /s/ C. Griesbach Auditor
For the Board of Trustees

Date	Purpose of Payment	Amount as Rendered	Deductions	Net Amount	Classification of Account
6/9/37	Apex Strike Pay:—				
				$1101.00	

620
✓

NO. 1794 ✓

Exhibit P-10-c

FULL FASHIONED HOSIERY WORKERS
UNION OF PHILADELPHIA
AND VICINITY

PHILADELPHIA, PA. June 11, 1937

PAY TO THE
ORDER OF Harry Oehmig $1808.50
DOLLARS

Payment Authorized By
Extensions Checked By
Entered Folio By M. McC

Examined and Approved
By /s/ C. Griesbach Auditor
For the Board of Trustees

Date	Purpose of Payment	Amount as Rendered	Deductions	Net Amount	Classification of Account
6/11/37	Apex Strike Pay	$1808.50			620

NO. 1795 ✓

Exhibit P-10-d

FULL FASHIONED HOSIERY WORKERS
UNION OF PHILADELPHIA
AND VICINITY

PHILADELPHIA, PA. June 18, 1937

PAY TO THE
ORDER OF Harry Oehmig $3131.00
DOLLARS

Payment Authorized By
Extensions Checked By
Entered Folio By M. McC

Examined and Approved
By /s/ C. Griesbach Auditor
For the Board of Trustees

Date	Purpose of Payment	Amount as Rendered	Deductions	Net Amount	Classification of Account
6/18/37	Apex Strike Pay:—				
	Sit-down strikers	$1090.00			
	Outside Pickets	2041.00			
		$3131.00			

620

NO. 1827

Exhibit P-10-e

FULL FASHIONED HOSIERY WORKERS
UNION OF PHILADELPHIA
AND VICINITY

PHILADELPHIA, PA. June 25, 1937

PAY TO THE
ORDER OF Harry Oehmig $3182.00
DOLLARS

Payment Authorized By
Extensions Checked By
Entered Folio By M. McC

Examined and Approved
By /s/ C. Griesbach Auditor
For the Board of Trustees

Date	Purpose of Payment	Amount as Rendered	Deductions	Net Amount	Classification of Account
6/25/37	Apex Strike Pay	$3182.00			620

NO. 1867 √

Exhibit P-10-f

FULL FASHIONED HOSIERY WORKERS
UNION OF PHILADELPHIA
AND VICINITY

PHILADELPHIA, PA. July 2, 1937

PAY TO THE
ORDER OF Harry Oehmig $3280.50
..... DOLLARS

Payment Authorized By
Extensions Checked By
Entered Folio By M. McC

Examined and Approved
By /s/ C. Griesbach Auditor
For the Board of Trustees

Date	Purpose of Payment	Amount as Rendered	Deductions	Net Amount	Classification of Account
7/2/37	Apex Strike Pay	$3280.50			620

NO. 1912 √

Exhibit P-10-g

FULL FASHIONED HOSIERY WORKERS
UNION OF PHILADELPHIA
AND VICINITY

PHILADELPHIA, PA. July 9, 1937

PAY TO THE
ORDER OF Harry Oehmig $3118.00
DOLLARS

Payment Authorized By
Extensions Checked By
Entered Folio By M. McC

Examined and Approved
By /s/ C. Griesbach Auditor
For the Board of Trustees

Date	Purpose of Payment	Amount as Rendered	Deductions	Net Amount	Classification of Account
7/9/37	Apex Strike Pay	$3118.00			620 ✓

NO. 1952 ✓

Exhibit P-10-h

FULL FASHIONED HOSIERY WORKERS
UNION OF PHILADELPHIA
AND VICINITY

PHILADELPHIA, PA. July 16, 1937

PAY TO THE
ORDER OF Harry Oehmig $2841.50
DOLLARS

Payment Authorized By
Extensions Checked By
Entered Folio By M. McC

Examined and Approved
By /s/ C. Griesbach Auditor
For the Board of Trustees

Date	Purpose of Payment	Amount as Rendered	Deductions	Net Amount	Classification of Account
	Apex Strike Pay	2841.50			620

NO. 1997 √

Exhibit P-10-i

FULL FASHIONED HOSIERY WORKERS
UNION OF PHILADELPHIA
AND VICINITY

PHILADELPHIA, PA. July 23, 1937

PAY TO THE
ORDER OF Harry Oehmig $3200.00
DOLLARS

Payment Authorized By
Extensions Checked By
Entered Folio By M. McC

Examined and Approved
By /s/ C. Griesbach Auditor
For the Board of Trustees

Date	Purpose of Payment	Amount as Rendered	Deductions	Net Amount	Classification of Account
7/23/37	Apex Strike Pay			$3200.00	620 ✓

NO. 2040 ✓

Exhibit P-10-j

FULL FASHIONED HOSIERY WORKERS
UNION OF PHILADELPHIA
AND VICINITY

PHILADELPHIA, PA. July 30, 1937

PAY TO THE
ORDER OF Harry Oehmig $3205.50
DOLLARS

Payment Authorized By
Extensions Checked By
Entered Folio By M. McC

Examined and Approved
By /s/ C. Griesbach Auditor
For the Board of Trustees

Date	Purpose of Payment	Amount as Rendered	Deductions	Net Amount	Classification of Account
7/30/37	Apex Strike Pay			$3205.50	620 ✓

NO. 2074 ✓

Exhibit P-10-k

FULL FASHIONED HOSIERY WORKERS
UNION OF PHILADELPHIA
AND VICINITY

PHILADELPHIA, PA. August 6, 1937

PAY TO THE
ORDER OF Harry Oehmig $3173.00
DOLLARS

Payment Authorized By
Extensions Checked By
Entered Folio By M. McC

Examined and Approved
By /s/ M. Casey Auditor
For the Board of Trustees

Date	Purpose of Payment	Amount as Rendered	Deductions	Net Amount	Classification of Account
8/6/37	Apex Strike Pay	$3173.00			620

NO. 2116

Exhibit P-10-l

FULL FASHIONED HOSIERY WORKERS
UNION OF PHILADELPHIA
AND VICINITY

PHILADELPHIA, PA. Aug. 13, 1937

PAY TO THE
ORDER OF George Braig $3091.50
DOLLARS

Payment Authorized By
Extensions Checked By
Entered Folio By M. McC

Examined and Approved
By /s/ M. Casey Auditor
For the Board of Trustees

Date	Purpose of Payment	Amount as Rendered	Deductions	Net Amount	Classification of Account
	Apex Strike Pay.	$3091.50			620 ✓

NO. 2158 ✓

Exhibit P-10-m

FULL FASHIONED HOSIERY WORKERS
UNION OF PHILADELPHIA
AND VICINITY

PHILADELPHIA, PA. August 19, 1937

PAY TO THE
ORDER OF Harry Oehmig $2978.00
DOLLARS

Payment Authorized By
Extensions Checked By
Entered Folio By M. McC

Examined and Approved
By /s/ M. Casey Auditor
For the Board of Trustees

Date	Purpose of Payment	Amount as Rendered	Deductions	Net Amount	Classification of Account
8/19/37	Apex Strike Pay			$2978.00	620 √

NO. 2205 √

Exhibit P-10-n

FULL FASHIONED HOSIERY WORKERS
UNION OF PHILADELPHIA
AND VICINITY

PHILADELPHIA, PA. August 27, 1937

PAY TO THE
ORDER OF Harry Oehmig $3105.00
DOLLARS

Payment Authorized By
Extensions Checked By
Entered Folio By M. McC

Examined and Approved
By /s/ M. Casey Auditor
For the Board of Trustees

Date	Purpose of Payment	Amount as Rendered	Deductions	Net Amount	Classification of Account
8/27/37	Apex Strike Pay			$3105.00	620 √

NO. 2244 √

Exhibit P-10-o

FULL FASHIONED HOSIERY WORKERS
UNION OF PHILADELPHIA
AND VICINITY

PHILADELPHIA, PA. September 3, 1937

PAY TO THE
ORDER OF Harry Oehmig $1468.50
DOLLARS

Payment Authorized By
Extensions Checked By
Entered Folio By M. McC

Examined and Approved
By /s/ M. Casey Auditor
For the Board of Trustees

Date	Purpose of Payment	Amount as Rendered	Deductions	Net Amount	Classification of Account
9/5/37	Apex Strike Pay	$1468.50			620

NO. 2288

Exhibit P-10-p

FULL FASHIONED HOSIERY WORKERS
UNION OF PHILADELPHIA
AND VICINITY

PHILADELPHIA, PA. September 9, 1937

PAY TO THE
ORDER OF Harry Oehmig $880.50
DOLLARS

Payment Authorized By
Extensions Checked By
Entered Folio By M. McC

Examined and Approved
By /s/ M. Casey Auditor
For the Board of Trustees

Date	Purpose of Payment	Amount as Rendered	Deductions	Net Amount	Classification Account
9/9/37	Apex Strike Pay	$858.50			
	Torresdale Add. Strike Pay	22.00			
				$880.50	620

NO. 2335

Exhibit P-10-q

FULL FASHIONED HOSIERY WORKERS
UNION OF PHILADELPHIA
AND VICINITY

PHILADELPHIA, PA. September 20, 1937

PAY TO THE
ORDER OF Harry Oehmig $1059.00
DOLLARS

Payment Authorized By
Extensions Checked By
Entered Folio By M. McC

Examined and Approved
By M. Casey /s/ Auditor
For the Board of Trustees

Date	Purpose of Payment	Amount as Rendered	Deductions	Net Amount	Classification of Account
9/20/37	Apex Strike Pay	$681.50			
	Oswald Strike Pay	269.00			
	Rialto Strike Pay	92.00			
	3 Lucille Helpers' discrimination Pay	16.50			
		$1059.00			

620 ✓

NO. 2385 ✓

Exhibit P-10-r

FULL FASHIONED HOSIERY WORKERS
UNION OF PHILADELPHIA
AND VICINITY

PHILADELPHIA, PA September 24, 1937

PAY TO THE
ORDER OF Harry Oehmig $426.00
DOLLARS

Payment Authorized By
Extensions Checked By
Entered Folio By M. McC

Examined and Approved
By /s/ M. Casey Auditor
For the Board of Trustees

Date	Purpose of Payment	Amount as Rendered	Deductions	Net Amount	Classification of Account
9/24/37	Apex Strike Pay			$426.00	620

NO. 2422

Exhibit P-10-s

FULL FASHIONED HOSIERY WORKERS
UNION OF PHILADELPHIA
AND VICINITY

PHILADELPHIA, PA. September 30, 1937

PAY TO THE
ORDER OF Harry Oehmig $421.00
DOLLARS

Payment Authorized By
Extensions Checked By
Entered Folio By M. McC

Examined and Approved
By /s/ Marge Given Auditor
For the Board of Trustees

Date	Purpose of Payment	Amount as Rendered	Deductions	Net Amount	Classification of Account
9/30/37	Apex Strike Pay	$307.00			
	Lafayette Strike Pay	114.00			
				$421.00	620

NO. 2462

Exhibit P-10-t

FULL FASHIONED HOSIERY WORKERS
UNION OF PHILADELPHIA
AND VICINITY

PHILADELPHIA, PA. October 7, 1937

PAY TO THE
ORDER OF Harry Oehmig $163.50
DOLLARS

Payment Authorized By
Extensions Checked By
Entered Folio By M. McC

Examined and Approved
By /s/ Marge Given Auditor
For the Board of Trustees

Date	Purpose of Payment	Amount as Rendered	Deductions	Net Amount	Classification of Account
10/7/37	Apex Strike Pay	$163.50			620✓

NO. 2513✓

Exhibit P-10-u

FULL FASHIONED HOSIERY WORKERS
UNION OF PHILADELPHIA
AND VICINITY

PHILADELPHIA, PA. October 14, 1937

PAY TO THE
ORDER OF Harry Oehmig $213.00
DOLLARS

Payment Authorized By
Extensions Checked By
Entered Folio By

Examined and Approved
By /s/ Marge Given Auditor

For the Board of Trustees

Date	Purpose of Payment	Amount as Rendered	Deductions	Net Amount	Classification of Account
10/14/37	Richardson Strike Pay	$111.00			
	Apex Strike Pay	85.50			
	Crystal Strike Pay (shortage)	16.50			
				$215.00	620 ✓

NO. 2549✓")

HARRY OEHMIG, sworn.

MR. HIRSCH:

May I withdraw this witness for one moment? Mr. O'Driscoll, will you take the stand again, please?

LEO O'DRISCOLL, recalled.

Cross Examination (Continued)

BY MR. HIRSCH:

Q. It is a fact, is it not, Mr. O'Driscoll, that you

were on the premises of the Apex Hosiery Company immediately following the time when the mob of persons broke into the mill on May 6th, 1937?

A. Mr. Leader was invited and I accompanied him.

Q. But you were on the premises?

THE COURT:
Yes.

A. That is right.

BY MR. HIRSCH:

Q. And you were outside before the mob broke in?

A. That is right.

MR. HIRSCH:
That is all, Mr. Oehmig.

HARRY OEHMIG, recalled:

Examination

BY MR. HIRSCH:

Q. Mr. Oehmig, you are the secretary and treasurer of the American Federation of Hosiery Workers, Branch No. 1?

A. That is right.

Q. Yours is a full-time job, is it not?

A. That is right.

Q. And a salaried position with the union?

A. Yes.

MR. HIRSCH:

I call Mr. Oehmig as for cross examination, he being a party-defendant in this case.

Cross Examination

BY MR. HIRSCH:

Q. Do you recall giving a deposition on December 2nd, 1938, pursuant to the Federal rules?

A. Yes, sir.

Q. At that time you testified that your position with the union was that of secretary and treasurer, that you had occupied that position for seven years, is that correct?

A. That is right.

Q. In your position as treasurer of the union one of your duties is to sign checks when funds of the union are drawn for the purpose of making certain payments, is that correct?

A. That is correct.

Q. And I believe you testified that all checks must be signed by you and countersigned by one of the several other officers?

A. That is right.

Q. But in any event, you sign all the checks?

A. That is right.

Q. And the vouchers that are now being used and shown to witnesses, which I show you, are vouchers made simultaneously with the drawing of the check, on the same machine?

THE COURT:

That has just been agreed to.

MR. HIRSCH:

All right.

THE COURT:

Please don't repeat those things.

MR. HIRSCH:

I wanted to show that his name does not appear on it, because his name is on the check, but not the voucher.

THE COURT:

It doesn't matter. They agree those are payments made by the union.

MR. HIRSCH:

All right.

THE COURT:

What more can you possibly get than that?

BY MR. HIRSCH:

Q. Now, then, in 1937 there were a number of sit-down strikes in the City of Philadelphia, were there not?

A. Quite a few.

Q. And during the period of those sit-down strikes your union maintained what is known as a strike kitchen at 46th—

THE COURT:

Well, now, Mr. Hirsch, let's look at this thing in a reasonable manner. If the union paid strike benefits to these men and designated them in vouchers as sit-down strikers what more can be established by showing that they supplied them with food, or bedding, or anything else, unless

—is it a fact, will the defendant admit that while they were in the plant they were supplied by the union with food? Is that a fact?

MR. SYME:

Yes, we will admit that.

THE COURT:

All right, that is admitted. Now, there isn't any use in going into that.

MR. HIRSCH:

All right.

THE COURT:

Is it also admitted that they were supplied by the union—

MR. SYME:

With cots and bedding?

THE COURT:

—with cots and bedding?

MR. SYME:

Yes, that is admitted.

THE COURT:

That is admitted. Now, is there anything else that you need along that line? I don't see it.

MR. HIRSCH:

Well, may I then offer in evidence—well, I don't need to do this, no. I was going to offer—

THE COURT:

I am sure I am not curtailing your case anyway, because all you—

MR. HIRSCH:

Well, may I state of record that we have photostatic copies of the vouchers covering the union's payments for food—

THE COURT:

Oh, yes.

MR. HIRSCH:

—for the strike kitchen that supplied food to the Apex sit-downers, and for payment for the cots and blankets which went in the Apex plant.

THE COURT:

Yes.

MR. HIRSCH:

Is it also admitted that the union paid for the medical services of Dr. Nark, who administered to the sit-down strikers at the Apex plant?

MR. SYME:

Surely.

THE COURT:

Have you got an idea of the total amount paid for food?

MR. HIRSCH:

I have all the vouchers.

THE COURT:

Well, all right, you can put them in later on if you want to. Let it go at that, it is all right.

How long were they in the plant, altogether? What are the facts about that, from the 6th of May to the 27th?

MR. HIRSCH:

23rd of June.

THE COURT:

23rd of June; about six weeks, five weeks—let's see, no, about six weeks.

BY MR. HIRSCH:

Q. In addition to yourself as full-time officers of the union there was Mr. William Leader, who was president, and Joseph Burge, who was vice-president?

A. That is right.

Q. And they received a salary for their position?

A. That is right.

Q. Charles Stout you stated also was an organizer for the union during the year 1937, is that correct?

A. That is right.

Q. And he was paid for such services by the union?

A. That is right.

BY THE COURT:

Q. These cots that were taken in there were moved in the day of the strike, were they not? Do you know anything about that?

A. That is right.

Q. And when were they purchased?

A. Why, we purchased them from time to time for different shops, and we kept them in the basement at the union hall. When anyone needed them they were there, at a minute's call.

Q. That is, they were drawn from a store which the union had on hand?

A. Yes, we purchased them in town and they were used in various mills.

Q. Were they used in other mills?

A. That is right.

Q. In other sit-down strikes?

A. That is right.

Q. Yes.

A. And then when they were through with them, why, they were stored away and used in another.

THE COURT:

Yes, I see.

MR. HIRSCH:

Is it also agreed, Mr. Simons, that the union paid for the removal of two truck loads of rubbish on June 16th from the Apex plant, and which was during the period of the sit-down strike?

THE COURT:

Well, I don't think that is worth bothering about,—

MR. HIRSCH:

All right.

THE COURT:

—anyhow.

BY MR. HIRSCH:

Q. Your union maintained what was known as organization headquarters for the Apex plant on Fifth Street immediately north of Rising Sun Avenue and across the street from the plant, did it not?

A. Yes.

Q. And in connection with that, you paid various expenses for telephones, and so forth?

A. That is right.

Q. Were you at the Apex plant on May 6th, 1937?

A. No.

Q. At any time?

A. I would say about seven o'clock I passed there, on the way home.

Q. Pardon me?

A. On the way home I passed there.

Q. Did you stop there for a minute?

A. Above, but about a square above it. They wouldn't let you stop, the officers kept you going up.

MR. HIRSCH:

That is all.

(The following occurred at side bar:

MR. HIRSCH:

It is agreed between counsel for the defendants and counsel for the plaintiff that Harry Sundheim, a witness at the trial of the bill in equity for an injunction, held before Judge Kirkpatrick on June 1st, 2nd and 3rd, 1937, is ill and unable to attend this trial. I therefore offer in evidence the following excerpts—

THE COURT:

Why don't you offer the whole thing in evidence?

MR. HIRSCH:

I offer in evidence all his testimony given by him on direct examination at the former trial.

THE COURT:

Well, is it objected to?

MR. SYME:

It is objected to.

THE COURT:

The Court at the present time is of the opinion that it does not come within the exception of testimony at a former trial, because I am not satisfied that the injunction hearing can be considered a former trial on the same issues that are involved in this case, although the parties, of course, were the same. However, I will examine this question and if I come to a different conclusion the offer can be renewed and we will admit the testimony then.)

THE COURT:

I think we will adjourn at this point. There are some matters that counsel want to take up with me in chambers that possibly may result in eliminating some of the testimony and expediting the case, so that we can adjourn now, and be here again at ten o'clock in your places, and please remember the caution I gave you at the outside of this case about not discussing the case.

Adjourned until Wednesday, March 15, 1939, at ten o'clock A. M.

Philadelphia, Pa., March 15, 1939

Third Day

Plaintiff's Evidence (Continued)

THE COURT:

We will resume the Apex case.

MR. HIRSCH:

Mr. Oehmig, resume the stand, please.

HARRY OEHMIG, recalled.

Cross Examination (Continued)

BY MR. HIRSCH:

Q. Mr. Oehmig, you were testifying yesterday when we recessed for conferences and otherwise?

A. Yes.

Q. I am correct, am I not, in saying that each member of the union pays a certain amount of dues to the union a week based on a percentage of his weekly earnings?

A. That is right.

Q. And that percentage has varied from time to time?

A. That is right.

Q. It was five per cent at one time?

A. That is right.

Q. And then three?

A. That is right.

MR. SYME:

I object to this, Your Honor. I don't see what relevancy it has to the case at all.

THE COURT:

Oh, it is all right. I will overrule the objection.

BY MR. HIRSCH:

Q. Now, out of dues that are taken from each member or received from each member per week a certain portion of that sum goes to the National Association of which your union is a branch?

A. Yes.

Q. Correct?

A. That is right.

MR. SIMONS:

If Your Honor please, our objection goes to this whole line of questioning.

THE COURT:

I will overrule the objection.

MR. SIMONS:

I say, may we consider it as going to this whole line of question,—

THE COURT:

Oh, yes.

MR. SIMONS:

—so we won't have to object to each question?

THE COURT:

It doesn't matter whether it does or not; anything you want about that. If you have estab-

lished your point it is all right. If you haven't, it doesn't matter. All right.

MR. SIMONS:

I object to this particular question because I don't know what the National Association has to do with the particular local—

THE COURT:

I can't tell yet, but I would say if it hasn't any relevancy it is perfectly harmless. If it has—

MR. HIRSCH:

I have a definite purpose.

THE COURT:

—then we will find it out. I don't know.

BY MR. HIRSCH:

Q. And the National Association publishes what is known as the official organ of the American Federation of Hosiery Workers, and part of the dues that are taken each week from each member of your branch are in payment for that publication, and a copy of that publication is sent to each member of your branch every week by the National Association as the official organ of the union, is it not?

MR. SYME:

I object to that, Your Honor. I mean, we are becoming so remote and so far removed; what the National Association does with the funds, and how the Hosiery Worker operates, if it is the organ of the National Association, has absolutely nothing to do with Branch 1, that is in no way identified or no way associated with it.

THE COURT:

It isn't easy for me to see just how this

MR. HIRSCH:

May I state the reason?

THE COURT:

Yes, surely.

MR. SIMONS:

Make it at side bar, if you will.

THE COURT:

Make it at side bar if it is requested.

(Discussion at side bar.)

THE COURT:

I will strike out all the testimony with regard to the payment, the testimony just given with regard to the payment of dues, but I will permit the witness to state if it is a fact that the paper published by the National Association, "The Hosiery Worker" was automatically sent to every member of the local. Is that correct?

MR. SYME:

That is right.

THE COURT:

So that every member of the local did receive "The Hosiery Worker", regardless of how it was published or who paid for it, or anything of that sort. Now, the rest of the testimony I will strike out.

MR. HIRSCH:

I offer in evidence—

THE COURT:
What is that, a daily?

MR. HIRSCH:
That is a weekly paper.

THE COURT:
Will you leave them here?

MR. HIRSCH:
Well, I want to offer them in evidence.

THE COURT:
All right, offer them in evidence, and then let me see them.

MR. HIRSCH:
I offer them as a plaintiff's exhibit, I make this offer as a single offer, Plaintiff's Exhibit 11; and will you mark each paper 11-a, b, c, d, and so forth,—

MR. SYME:
Your Honor, I object—oh, I am sorry, are you through, Mr. Hirsch?

MR. HIRSCH:
—the issues of "The Hosiery Worker" dated March 5th, March 12th,—

THE COURT:
May, isn't it?

MR. HIRSCH:
These are preliminary matters.

THE COURT:
All right, go ahead.

MR. HIRSCH:
—March 26th, April 2nd, April 9th, April

16th, April 23rd, April 30th, May 14th, May 21st, May 28th, June 11th, June 18th, June 25th, 1937, July 2nd, 1937, July 9th, 1937, and August 6th, 1937, offering the paper particularly as to those parts which have been encircled with a black or red pencil mark, and which specifically refer to sit-down strikes in the City of Philadelphia being conducted by this branch union, the technique that was employed, and also specifically referring to the sit-down strike at the Apex plant.

MR. SYME:

Your Honor, I object to the admissibility of these newspapers in evidence. At the most, Mr. Hirsch doesn't even contend that Branch 1 had anything to do with the editorial policy of the newspaper, or anything, the only thing that Mr. Hirsch contends is that we received that newspaper.

THE COURT:

Well, the Court so understands, and the Court is receiving it in evidence on the statement of counsel that they contain a description and a report of what was going on during the course of the sit-down strike, and it is received merely for the purpose of showing that the members, the individual members of the local union, had knowledge of what was being done.

MR. SYME:

It would be received in the same way as a newspaper would be received,—

THE COURT:

Exactly the same.

MR. SYME:

—isn't that so, Your Honor?

THE COURT:

Same way, exactly.

MR. SYME:

Indicating we were in no way bound by any of the statements made in "The Hosiery Worker".

THE COURT:

I so rule, you are not bound by the statements made. They are not authorized, in other words, by the local union, there is nothing to show that. I am receiving them on the ground of knowledge and notice of the events that were taking place.

MR. HIRSCH:

Now, I also offer the paper of August 6th, 1937 for the specific purpose of showing Leader's statement made to this official organ of the union, and which is repeated here in this paper, pertaining to the Apex contract and the strike that had taken place.

THE COURT:

Well, you can follow that by proof that Leader did authorize that statement or did make it. I have no doubt it is a fact. I will take that subject to proof that he authorized the statement. If they published something that is admissible as against him, at any rate.

MR. HIRSCH:

I also offer the papers for proof of the facts set forth therein pertaining to the activities of

Branch I in Philadelphia, for the further purpose of showing that the members of the union who were members of the Branch in Philadelphia had knowledge of everything that was going on.

THE COURT:

Well, it is received for that purpose.

MR. HIRSCH:

Will you mark these?

(Copies of The Hosiery Worker were marked as follows:

P-11-a, issue of March 5, 1937

P-11-b, issue of March 12, 1937

P-11-c, issue of March 26, 1937

P-11-d, issue of April 2, 1937

P-11-e, issue of April 9, 1937

P-11-f, issue of April 16, 1937

P-11-g, issue of April 23, 1937

P-11-h, issue of April 30, 1937

P-11-i, issue of May 14, 1937

P-11-j, issue of May 21, 1937

P-11-k, issue of May 28, 1937

P-11-l, issue of June 11, 1937

P-11-m, issue of June 18, 1937

P-11-n, issue of June 25, 1937

P-11-o, issue of July 2, 1937

P-11-p, issue of July 9, 1937

P-11-q, issue of August 6, 1937

Copies of the excerpts marked in these exhibits follow:

Exhibit P-11-a

"BR. ONE TO NAME DELEGATES

Philadelphia.—Branch One, American Federation of Hosiery Workers will elect delegates to the Pennsylvania State Federation of Labor Convention, on Friday, March 5 and Monday, March 3 Ballot boxes will be open until 11:30 P. M., each night.

Because of the election, Branch One will hold no meeting this Friday. Five delegates are to be elected.

The list of nominees: Herman Weber, Paul Nothe, Harry Ingram, Harry Casey, Joseph Humes, Casimer Miller, Helen Herman, Earnest Kornfeld, Robert Decker, Joseph Kline, George Hufnagle, Fred Phelps, Leo O'Driscoll, Marie Hughes, Harry Bell, William Leader, Joseph Burge, Otto Lobe, Edmund Ryan, Jr., Leo De Martin, Mary Tomassi, Howard Kirsh, Elwin Rimensnyder has withdrawn his name from the list."

"SIT-DOWN CLOSES WHITEHALL; PACT SOUGHT AT MARTHA

Philadelphia.—A sit-down strike was declared Tuesday afternoon at the Whitehall Knitting Mills, by Branch One, of the American Federation of Hosiery Workers. The strike was called to secure an adjustment in wages up to the union scale, collective bargaining, closed shop, and the check-off.

About 50 per cent of the plant was affected by the strike on the first day, but became 100 per cent effective Wednesday, when all workers; including the dye-house, joined.

The Whitehall is a complete manufacturing unit, including wareroom and boarding, employing about 450 workers. As soon as the strike was declared, equipment was moved into the mill for the strikers—cots, blankets, pillows, radios, and other supplies.

A union kitchen to supply food has been opened near the mill, and a sound truck is broadcasting talks and musical entertainment. There are 200 stay-inners, but somewhat different from the ordinary situation, there is also an outside picket line, making this a double-barreled strike. No supplies or merchandise are entering or leaving the plant.

William Leader, president of Branch One, announced the union is ready to carry on this fight for an indefinite period until it is won.

MARTHA PACT DEMANDED

Branch One, through Leader, presented demands Wednesday to the management of the Martha Silk Hosiery Mills, which include a closed shop contract, check-off, and full union rates and conditions. The company requested sufficient time to have a Board of Directors' meeting and will make its answer to the union on Monday. All indications point to the signature of an agreement with this firm."

• • • • • •

"PINOCHLE DECK SHORTAGE IRKS SIT-DOWNERS

Reading, Pa.—A shortage of pinochle decks was the only incident to mar the first days of the current sit-down strikes in the general hosiery walkout of Berks County.

Always assiduous devotees of pinochle, these Pennsylvania Dutch hosiers had their friends and union officials scurrying all around the town for playing cards to carry into the plants.

The workers are in gay mood with Concertinas and banjo serenades, indulged in by the workers inside and those outside the mills. All manner of games are indulged in by the strikers from darts and quoits to checkers and twiddly winks.

As the strike progressed in some shops measures were taken to insure the health of the strikers. At the Nolde and Horst mill in Womelsdorf all the strikers are obliged to line

up in the lot next to the mill twice each day and go through setting up exercises. The man or woman who through laziness seeks to duck exercise is mercilessly kidded.

READING AT READING

Quantities of books, newspapers and magazines were hastily accumulated to carry into the sit downers. Baskets and bundle loads of reading matter were collected from every possible source to keep the voracious sit downers satisfied.

At least once each day a special bulletin issued from union headquarters giving last minute reports is distributed in each mill. This prevents false rumors from getting a start and keeps the strikers constantly on their toes.

Preparations are being made to radio messages to the strikers each day from the local broadcasting station. In each shop the workers have installed radios and victrolas. In one mill special loud speakers are used. Relatives visit the sit-downers as often as possible.

SERVICE OF SUPPLIES

The task of organizing the food supply for the widely scattered mills has kept union officials busy. In some cases the women workers in the mill set up a kitchen on the outside of the shop to prepare food which was handed in through the windows."

• • • • •

"THE TIDE HAS TURNED

The tide has turned. Things are decidedly looking up for the cause of unionism in the hosiery industry.

The success of the sit-down strikes in Berks County and in Philadelphia has been phenomenal. In Berks County the workers are confident that union agreements will be obtained in the great majority of plants as a result of the stoppage which commenced this week.

The sit-down strike technique has proven to be most effective up to this point and workers are completely confident that they will be quite capable of keeping the struck mills closed down tight as long as is necessary. A new psychological element appears in the situation when the workers are inside the plant looking out. Workers seem to be much more certain that they can keep the mills closed down when they are inside the shop than when they are out on the picket lines looking in at their jobs.

When he is trudging up and down on the streets around the mill, the worker can never rid himself of the fear that some trick will be pulled on him—that deceit or treachery will be attempted. But sitting at his accustomed position in the plant, the worker can see just what is going on and his mind is free from foreboding or doubts.

Moreover, out on the picket line the striker is always subject to attacks from scabs, from paid agents of the boss or the so-called officers

of the law. Outside the mill the worker can be more readily harmed and intimidated; he can be more easily provoked into violence or disorder. Outside the mill the authorities are always willing to attack a striker; inside the plant if a striker is attacked the property of the manufacturers is liable to be damaged and, therefore, the striker is freer from threat of brutality or assault.

It is very apparent that the real reason that anti-unionists do not like the sit-down strike tactic is just because the use of the method is a guarantee that the strike will be peaceful—as far as the strikers are concerned.

From the standpoint of labor the successful application of the sit-down strike method depends to a great extent on the solidarity of the workers in the group and the self-discipline which has been developed by this unit. A sit-down strike would probably not function very well if the workers were seriously disunited or had had no experience with acting together prior to the strike. In the present state of affairs in the hosiery industry, sit-down strikes appear to be just the right way to win what the workers need and must have.

The amazing and historic advances made by the CIO in steel and elsewhere in the past few days has done much to improve the prospects for all unions in this country.

The American Federation of Hosiery Workers was well advised to throw in its lot with the CIO group and to support this splendid effort

to organize the workers in the basic industries. The victories in General Motors and the Steel drive greatly enhanced the prospects for victories among the hosiery workers in Reading and Philadelphia.

For years the American Federation of Hosiery Workers has preached the necessity for a labor movement which will take the position that there can be no real division among any groups of workers and that those who toil must aid each other under all circumstances. We have done our bit to promote such a movement and now that it is actually becoming a partial reality we find ourselves likely to "cash in" fairly quickly.

The hosiery workers of Berks County and Philadelphia are going to win. When they have achieved union recognition and other objectives these workers will turn around and help the next fellow, hosiery worker or whoever he may be, win a similar victory for himself and for the labor movement and democracy."

Exhibit P-11-b

"MARTHA SIGNS AS STRIKERS STAY IN AT WHITEHALL

* * * * *

The mop-up campaign of Branch One on the non-union hosiery producers in Philadelphia County, is being carried on shop by shop. No manufacturer having contractual relations with

the union is to be affected, this includes those shops formerly in the National Labor Agreement, in which the contract provisions are being automatically carried out."

• • • • •

"WHITEHALL STRIKERS FIRM

More than 200 strikers at the Whitehall Knitting Mills dug into heaping plates of fried chicken Sunday, sat rapt while the funnies and a feature length movie were unreeled on a screen, and signed: "This sit-down is the life!"

The sit-down was declared on March 2 to secure an adjustment in wages up to the union scale, collective bargaining, closed shop, and the check-off.

The fried chicken was sent in Sunday from the union food kitchen set up by Branch One, of the Federation, near the mill. A sound truck stationed outside the mill enlivens the hours with the latest melodies, forming an accompaniment for community singing by the strikers.

Not only are there sit-downers, but an outside picket line as well, watching closely to see no supplies or merchandise enter or leave the plant.

The sit-downers are fully determined to carry on the fight for an indefinite period, until it is won."

Exhibit P-11-c

"BRANCH ONE GUIDES THREE SIT-DOWNS FOR UNION PACTS

Philadelphia—The more than 100 workers at the Venus Silk Hosiery Company, Inc., Wissonoming and Friendship sts., pulled a sit-down strike last Wednesday when the firm refused to grant their demands for a closed shop and wage increases.

The sit-down at the Venus marks the third hosiery mill to be closed down here by similar strikes. Workers at the Federal Knitting Company sat down two weeks ago to force the granting of demands similar to those of the Venus strikers, and the Whitehall Hosiery Mills have been closed down for three weeks by stay-in strikers.

Sit-downers at all three mills are keeping themselves occupied with such pastimes as cards, music, books, songs and daily exercises in the mill yards. Hosiery workers in other shops have been taking time off to visit the sit-downers, and amuse them with bits of news of the outside world.

Outside picket lines at the Whitehall and day-time sit-downers augment the more than 200 strikers who are staying in. Approximately 450 workers are striking at the Whitehall, where the shut-down was precipitated by the company's refusal to recognize Branch One, of the American Federation of Hosiery Workers as collective bargaining agent for its workers.

The Federal strike was called when negotiations between the branch and management failed to reach any satisfactory settlement. The union demanded a closed shop, check-off contract, and full union rates. More than 160 workers are involved in the situation.

Negotiations with other open shops are in progress between managements and officers of Branch 1, William Leader, president of the local, is highly optimistic regarding the outcome of these negotiations, and expects several agreements will be signed during the coming week."

Exhibit P-11-d

"SIT-DOWNERS FIRM AT 3 PHILADELPHIA MILLS

Philadelphia—Sit-down strikers at the Venus Silk Hosiery Company, Inc., Wissonoming and Friendship sts., entered their third strike week determined to remain in the mill until their demands for a closed shop and wage increases are met.

Fifteen of the Venus strikers Wednesday staged a demonstration before the homes of two of the Venus stockholders. For more than one hour the pickets marched up and down before the homes carrying placards proclaiming the Venus strike, and informing the neighborhood that the stockholders refused to intervene to settle the strike.

Meanwhile, equally determined to gain their demands, sit-downers at the Whitehall Hosiery Mill, now in their fourth strike week, and strikers at the Federal Knitting Company, entering their fourth week, occupied the hours with song and cheer, and welcomed eagerly news of the outside world brought to them by visiting Branch One members.

The men are literally entering into a pinochle siege, and competition waxes keener every day. Talented musicians and singers among the strikers have spent so much time practicing that they are confident of successful radio auditions when the strike is over.

The sit-downers declare they have never eaten as good meals as are furnished them by Branch One's Strike Food Kitchen, and it is rumored a good many of the strikers have gained considerable weight.

Approximately 660 workers are on strike at the three mills. All demands include the closed shop union rates and conditions and the check-off system."

Exhibit P-11-e

"FOUR PLANTS REMAIN IDLE AS BR. ONE DRIVE GOES ON

Philadelphia—Four hosiery plants stood idle this week as Branch One of the Federation continued its crusade for closed shop agreement in open-shop mills.

Strikers in all four mills present orchids to Branch One's Strike Food Kitchen for their splendid meals. Six of the local's members are occupied day and night in preparing food for the 800 strikers."

Exhibit P-11-f

"Philadelphia.—Three more closed shop, check-off agreements, and two strikes this week highlighted Branch One's rapid progress in its campaign to wipe the city free of chisellers and gain a complete closed shop hosiery industry.

* * * * *

Branch One has victoriously settled five of the nine strikes pulled in as many weeks by its members. The Brownhill-Kramer, Arlington, Whitehall, Federal and O. K. employes are all working under closed shop, check-off agreements as a result of the local's highly successful campaign. Agreements were all negotiated by President Leader of Branch One."

* * * * *

VICTORY!

Philadelphia,—Another smashing victory in Branch One's campaign to unionize this city's hosiery industry was scored Monday when the Whitehall Hosiery Company signed a closed shop, check-off agreement, ending the five-week sit down strike at the plant.

The firm ceded its workers all their demands,

including union rates and conditions, and arbitration of all disputes. The pact was signed by William Leader, president of Branch One, and Burns Robie, head of the company, in Mayor Wilson's office, and terminated a four-hour conference period.

The firm's agreement to pay union rates means a wage increase of approximately 18 per cent to many of the workers."

Exhibit P-11-g

"Philadelphia,—Branch One's steady march toward a closed shop hosiery industry in this district gained added impetus this week with a victorious settlement of the Sunrise Knitting Mills strike.

• • • • •

William Leader, President of Branch One, conducted negotiations with the firm management for the workers.

• • • • •

Sit-downers at the J. J. Strahan Company, 17th and Indiana ave., entered their second strike week determined to remain in the plant until management ceded their demands for a closed shop union contract.

Attempts by President Leader to settle the strike have met with failure.

• • • • •

The strike is being led by the local Council for Industrial Organization, with William

Leader, as head of the CIO, in charge. Leader, who is also president of Branch One of the American Federation of Hosiery Workers, declared his union was not involved in the situation, because of an injunction, issued in 1931 by Judge Harry McDevitt, which prohibits the union from picketing, striking or organizing the plant.

COURT HEARING SATURDAY

Management of the strike-bound plant Wednesday petitioned Judge McDevitt to issue a court order declaring Leader, Joseph Burge and Leo O'Driscoll, president, vice-president and business agent respectively of Branch One, in contempt of court for violating the 1931 injunction. The firm also asked McDevitt for an order to the Sheriff to evict the sit-downers and declare them in contempt of court. The hearing will be held 10 A. M. Saturday in Room A, City Hall."

Exhibit P-11-h

"ARTCRAFT STRIKE IN NEGOTIATIONS' HANDS; DELAY COURT ACTIONS

Philadelphia.—Dining on chicken, listening to the radio, playing pinochle and dancing to the music of portable victrolas, sit-down strikers at the Arteraft Silk Hosiery Mills continued to make merry while negotiations continued between William Leader, President of Branch One of the American Federation of Hosiery Work-

ers, his aides and representatives of management.

• • • • •

CLOSED SHOP AT VENUS

The five-week sit-down at the Venus Hosiery Mills, Wissinoming and Friendship sts., was settled last Thursday when the firm agreed to a closed shop, check-off agreement. The pact was reached at a conference between William Leader, president, and Joseph Burge, vice president of Branch One; Antoni Maachowski, president and Edward Kletke, vice president of the firm. It provides for union wages and hours, and seniority rights.

The Venus is the 7th mill signing a closed shop contract as a result of Branch one's drive for a 100 per cent union industry in this city. Of the 11 strikes called by the branch, only four remain unsettled, the Lucille, Strahan, Brooks and Anderson, and the Marshall Field."

Exhibit P-11-i

"CAMBRIA FALLS AS 3 MILLS SIGN UP IN BR. ONE CAMPAIGN

Philadelphia.—A sit-down strike of the 225 workers at the Cambria Hosiery Mills was called Wednesday as Branch One marched steadily onward to its organization campaign goal of a closed shop hosiery industry with the signing of three closed shop agreements, bringing the total pacts obtained since January to

13. The Cambria workers sat down Wednesday when the firm refused to cede their demands for a closed shop, check-off contract with union wages and hours. Cots and bedding were provided for the strikers, and Branch One's food kitchen is sending in hot meals.

AGREEMENTS SIGNED

Sit-down strikers at the Lucille Hosiery Mills, Bodine and Bristol sts., ended their 40 day strike Monday when the firm signed a closed shop, check-off agreement. The pact was signed by Elwood Hoffman, president of the firm; Alexander Scott, company vice-president, and William Leader, president of Branch One.

• • • • • •

'Our campaign goal of a closed shop hosiery industry here will be reached within a very short time,' Leader confidently predicted today. 'To date the union has been completely victorious in 13 shops, where the workers are now under complete closed shop contracts. We expect satisfactory settlements in the remaining mills on strike very shortly'."

Exhibit P-11-j

"APEX STAYS SHUT AS STRIKERS STAND FIRM 2300 IN LARGEST PHILA. MILL JOIN UNION RANKS; CLOSED SHOP PRIME DEMAND

Philadelphia.—The Apex Hosiery Mill, citadel of openshopdom and white hope of anti-

labor manufacturers in this vicinity, remained closed down tight this week as sit-down strikers held undisputed possession of the plant.

Final and uncombatable evidence of the union's strength among the workers is the fact that 2300 of these hitherto unapproachable Apex employees are members of the union. The remaining 200 are rapidly joining the union's ranks.

Rigid regulations, set up when the strike was called two weeks ago, are strictly enforced among the sit-downers, all of whom have had duties assigned to them which they are carrying out efficiently. Of the 2500 striking Apex workers, 300 are sitting down in the plant, and the remainder maintain a mass picket line around the mill each day.

The outside strikers, at a meeting this week, emphasized their determination to keep the mill closed until the firm signs a closed shop check-off contract.

* * * * *

The only way by which the strike will be terminated, strike leaders declare, is the signing of a contract establishing the closed shop, check-off and full union rates and hours.

BROOKS, ANDERSON SIGNS

The 25-day sit-down strike at the Brooks and Anderson Hosiery Mill ended Friday when the

firm signed a closed shop contract with Branch 1, covering more than 120 workers.

* * * * *

VOGUE SIGNS UP

Sit-down strikers at the Vogue Hosiery Mills started their machines Wednesday when the firm signed a closed shop contract, ending its 27-day strike.

* * * * *

Sit-downers at the Torresdale Hosiery Mill opened negotiations with management this week for settlement of their 4-week strike. The strikers will stage a gala donation party 9 P. M Tuesday, May 25, in the mill.

SIT-DOWNS CONTINUE

Sit-downs at the Cambria, Marnet, J. J Strahan and Arteraft Hosiery Mills continued in full swing, as the workers stood adamant on their determination not to return to work unless the firms sign a closed shop, check-off contract."

Exhibit P-11-k

"Philadelphia.—Branch One, AFHW., recorded one of its greatest victories in recent years as the Arteraft Hosiery Company signed a closed shop, check-off agreement Monday, ending a five week strike.

The agreement, negotiated between Jack Kugelman, company president, and William Leader, president of Branch One, also provides for full union wages and hours, elimination of the two machine system and arbitration of all disputes.

• • • • •

Union leaders, openly jubilant over the victory at Artcraft, predicted a similar settlement at the Apex shortly."

• • • • •

"Philadelphia.—Following the usual procedure of union-baiting, open shop employers, the Apex Hosiery Company this week invoked the aid of the courts in an attempt to 'injunction' its striking sit-downers from the plant at 5th and Luzerne Sts.

"Meanwhile, the effective combination of sit-down strikers and outside picket line continues to keep the mill closed down. More than 2300 of the 2500 Apex workers are members of the union."

Exhibit P-11-l

"APEX DENIED INJUNCTION AGAINST SIT-DOWN STRIKERS APPEAL HEARING MONDAY

Philadelphia.—The injunction petition brought by the Apex Hosiery Company against Branch One, American Federation of Hosiery

Workers to evict the 850 sit-down strikers, was dismissed Saturday by Federal Judge William H. Kirkpatrick.

The decision, a signal victory for the union in its one month old strike, was made on the ground the Federal Court had no jurisdiction in the matter.

The Apex Company filed an appeal and the U. S. Court of Appeals fixed a hearing for Monday.

Judge Kirkpatrick declared the company's production is not important to interstate commerce, and therefore the union's actions as charged by the firm did not constitute "undue or unreasonable" restraint of interstate commerce which would bring it under the Federal Court's jurisdiction.

• • • • •

The 250 Apex sit-downers continue to occupy the mill, keeping all production at a standstill, while the remaining 2050 members of the union stand adamant on their determination to gain a closed shop contract."

Exhibit P-11-m

"APEX CONTINUES INJUNCTION HUNT AS 7 MILL SIGN

Apex Striker Gives Blood For Fellow Hosiery Worker's Life

Philadelphia.—Jack Thurman, Jr., striker at the Fox Chase Hosiery Mills, is on the road

to recovery today because Frank Steiner, an Apex Hosiery Mill sit-downer unhesitatingly gave his blood that a fellow Branch One member might live.

Thurman was stricken seriously ill Friday with a sudden attack of bronchial pneumonia. A blood transfusion was necessary so that he could undergo an operation. No sooner had Jack Thurman, his father and an active Branch One member, appealed to the local for blood donors than five Apex strikers Frank Steiner, Joe Winward, Steve Middleton, John Ezzo and Alfred Baack volunteered their blood. Steiner's blood was the right type.

• • • • •

A closed shop agreement ended the 8-week sit-down of more than 165 workers at the Marnet Hosiery Mills. The pact, signed by Earl Kurschner, company president, and President Leader, contains provisions similar to those in the Cambria settlement.

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Sit-down strikes at the J. C. J. Strahan, Fox Chase and Marshall Field Hosiery Mills continued in full swing as the strikers remained determined to obtain closed shop contracts.

Exhibit P-11-n

"APEX SIT-DOWNERS OUT BUT 24-HOUR PICKETING STILL KEEPS MILL SHUT

Rieve Calls for Congressional Probe

Philadelphia.—Sit-down strikers evacuated the Apex Hosiery Mills Wednesday in a desire to avoid bloodshed that might have followed the threatened use of the United States Army to enforce the order of the United States Circuit Court of Appeals.

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Tuesday, union officials held conferences with Judge Kirkpatrick, Mayor Wilson and Reing in an effort to delay the eviction. Fearing violence, not only inside the plant, but outside, where thousands of pickets were massed, Reing did not act Tuesday.

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CONFER WITH MAYOR

Present, in addition to the Mayor, were Rieve, William M. Leader, president of the Philadelphia local of the Hosiery Workers Union; M. Herbert Syme, counsel for the union; Joseph Burge, vice-president of the local, and members of the strike committee from the Apex Mill led by Leo O'Driscoll.

Leader informed the group every legal means had been attempted by the union to delay the threatened eviction. Mayor Wilson warned the men the 'deadline had been reached' and that to continue in the plant would force Marshal Reing to take drastic steps to fulfill his Court-imposed duty.

By that time, the conferees in the Mayor's office decided the mill should be evacuated voluntarily, but final decision was up to the sit-downers themselves. So the whole group sped to the mill at Fifth and Luzerne streets.

The Mayor and the union officials were admitted to the plant, first visitors since the strikers took over. They first went to the office, and then out into a first-floor corridor, where the strikers met them.

'We are fighting the Apex Hosiery Mills, not the United States Government, Leader told the sit-downers.

'The official agency of the Government has ordered us out. We will be opposing the Government if we stay in the mill. No union and no group has ever successfully rebelled against the Government.

'We can get what we want by fighting outside the mill, and your officers feel that is what we ought to do. We have done everything we legally could to resist the order of the court. If we don't comply, they are ready to issue body warrants for all of us.

'You know what that means. They will

send troops up here and take every man out —dead or alive.'

Then William Etter, Apex shop chairman, declared: 'Bill Leader has done everything he can for us, and if he says it's time to leave here peacefully, that's all right with me. I Say, Let's Go Out,' He Concluded.

The vote and evacuation followed. Immediately the 24-hour picket line was established."

* * * * *

"* * * TO HIGH HEAVEN!

The sit-down strikers in the Apex Hosiery Mill have evacuated the mill.

This followed the decision, unwarranted by law, reason, or justice, of the United States Circuit Court of Appeals; an order supported and reinforced by threats of U. S. Attorney General Cummings to place the United States Army at the disposal of the Apex Co

The evacuation does not end the strike, which will be conducted with vigor and effectiveness. Injunctions do not solve the problems involved.

The action of the Circuit Court of Appeals raises greater issues than the Apex Strike itself. Under the weird interpretation by the Circuit Court, the Wagner Act not only is inoperative but is turned against the workers it was designed to benefit, and once more oppressive industry straddles the economy of the Nation with the Sherman Act a mace to beat down all human progress.

Aside from the normal step of appealing the Circuit Court's outrageous decision to the United States Supreme Court, the American Federation of Hosiery Workers, supported by the rest of the organized labor movement and particularly the Committee for Industrial Organization and United Mine Workers of America, is initiating action to bring about a Congressional probe of the conduct of the U. S. Circuit Court of Appeals in this case.

The Apex decision is not a lone ruling in its outright anti-labor bias and vemon, but is indicative of the court's general attitude and policy. This is proved by its decision, only a week prior to the Apex Decision, in the Delaware-New Jersey Ferry Company case. In this decision the court, according to the sole dissenter, and incidentally the newest member of the court, 'voided the major provision of the Wagner Act and put a premium upon the very practices its avowed policy prohibits.'

It is decisions such as these and courts such as these that, despite the spleenish rantings of the Senate Judiciary Committee, makes imperative the success of President Roosevelt's plans to reform our Federal courts. Such decisions in such courts settle no strikes but only make them more necessary. Such decisions may be clutched to the bosoms of employers as triumph but they constitute a physic victory to the people of the country who must pay for them in continued economic slavery and industrial strife."

Exhibit P-11-o

"ONLY FIVE MILLS NOT UNDER CONTRACT IN PHILADELPHIA; SOLE LARGE ONE, APEX, STILL SHUT

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Five strikes, the Apex, Oswald, Fox Chase, Strahan and Marshall Field, stand between the Branch and a 100 per cent closed shop hosiery city. All, with the exception of the Apex, are sit-down strikes.

'We are tremendously satisfied with the progress of our campaign,' Leader said this week. 'We have no doubt that the city will be a 100 per cent union hosiery city within a few weeks.'

National hosiery officials commended the branch on its splendid campaign."

Exhibit P-11-p

"STRAHAN SIGNS UP WITH BRO. 1; ONLY 4 LEFT IN PHILA.

• • • • •

The 2500 strikers at the Apex Hosiery Company maintain a vigilant picket line around the plant daily. The mill is completely down, the eviction order having availed the company nothing in starting operations at the plant. The strikers are more than ever grimly determined to gain their demands for a closed union shop and the check-off.

'Our organization campaign has been most successful to date,' Leader said this week. 'Our goal of 100 per cent closed shop in the hosiery industry here is practically gained. We have no doubt it will be reached within a few weeks.' ''

Exhibit P-11-q

"LEADER HAILS APEX CONTRACT AS UNION GAIN

Philadelphia.—The Apex settlement has aroused nationwide attention and nationwide comment. The members of Branch 1, I am sure, are interested to know what my reaction is to the settlement.

The strike in itself was probably one of the most eventful, not only in the hosiery industry, but in labor as a whole.

The Apex Company stood as the bulwark of anti-unionism. It stood there as a threat and as a dare to the hosiery workers and to labor as a whole. Our union has been in existence for 27 years, and for 20 years the hope and aspiration of every hosiery worker has been the unionization of the Apex Hosiery Company. For 20 years it has been the cherished hope of the members of our union that we would be able to welcome into our midst the Apex Hosiery employes.

On May 6th we finally felt that we were sufficiently strong and that we had sufficient co-

operation from within the mill to lay down the challenge to the company. For a period of three months we withstood all of the pressure and all of the force that could be brought against an individual union by the combined reactionary opinion, not only of Philadelphia, but throughout the country. For three months we were dragged through every court, from the Magistrate's Court to the United States Circuit Court of Apeals. For three months we were threatened with imprisonment, prosecution, and with complete destruction. For three months we withstood every attack upon our persons and upon the resources of our union.

* * * * * *

The agreement stands as a fulfillment of the desires of the hosiery workers. During the negotiations at one of the conferences I pointed out that I sit not merely representing myself, not merely representing the committee, but I sit and express the desires of all the union hosiery workers, those who are living and those who have died on behalf of our union. I feel that this agreement is a tribute to their valor, to their devotion, to their self-sacrifice."

BY MR. HIRSCH:

Q. Did your union ever expel from its membership any of the members of your union who were sit-down strikers on the Apex premises during the period of May 6th, 1937 to June 23, 1937 because they were sit-downers, that you know of?

A. Not to my knowledge.

Q. And do you know of any member of your union who resigned from the membership in your union because he or she did not approve what was taking place on the Apex premises during the period of the sit-down strike?

A. I do not.

Q. All of the books and records are under your general supervision, are they not?

A. Financial books.

Q. You are in charge of the office?

A. That is right.

Q. And the books and records of this union are kept at the office of the union?

A. That is right.

Q. And the office is located where?

A. 2530 North 4th.

MR. HIRSCH:

That is all, Mr. Oehmig, at the moment. Mr. Burge.

JOSEPH PATRICK BURGE, having been duly sworn, was examined and testified as follows:

(Discussion off the record.)

THE COURT:

I was only wondering why a selection had been made of these so far apart.

MR. HIRSCH:

Because in the other ones there wasn't any specific reference that we thought was valuable—

THE COURT:
All right.

MR. HIRSCH:
—to our presentation of the case.

THE COURT:
All right.

MR. HIRSCH:
These are the papers that contain something that we thought was germane to the issue.

THE COURT:
All right.

BY MR. HIRSCH:
Q. Mr. Burge, in May, 1937 you were the vice-president of this defendant union, were you not?
A. Yes.

MR. HIRSCH:
I call this witness as for cross examination.

THE COURT:
Who is this? I didn't get it.

MR. HIRSCH:
A named defendant, Joseph Burge.

THE COURT:
All right.

MR. HIRSCH:
Vice-president of the union.

Cross Examination

BY MR. HIRSCH:
Q. Are you the vice-president at the present time?

A. No.

Q. And you recall the sit-down strike which took place at the Apex Hosiery Company?

A. I do.

Q. Were you present at the Apex Hosiery mill on May 6th, 1937, at any time?

A. Yes.

Q. What time of the day did you get there?

A. I should say around four o'clock.

Q. Had the mill already been broken into?

A. There was a crowd milling around, and I had been informed that Mr. Leader had gone in to confer with Mr. Meyer when I got there.

Q. Did you enter upon the premises?

A. Yes.

Q. And how long were you on the premises?

A. During the conversation which took place between Mr. Meyer and Mr. Leader.

Q. And you were there as an official representative of this union, Branch 1?

A. Yes.

Q. And as its vice-president?

A. Yes—I hadn't been delegated to go there.

Q. But you were its vice-president at the time?

A. That is right.

Q. And it is true that in other conferences that took place during the pendency of the strike between management and the union you attended those as vice-president and representing the union?

A. Some of them.

Q. Some of them, and it is a fact, is it not, that conferences that were held between the union and management were reported back to the union's executive board—

A. Yes.

Q. —from time to time?

A. Yes, the salient points of those conferences.

Q. And it is a fact that the strike at the Apex mill was discussed by the entire general membership of the union at its membership meetings from time to time during the pendency of the strike?

A. I wouldn't say that it was in any particular instance that I can remember. There had always been a feeling that we shall organize Apex, but I don't remember any meeting which specifically dwelt on that particular question.

Q. Do you remember any meeting during the time the strike was in progress where a report was made as to the progress that the union representatives were making with management in the negotiations?

A. After the strike had commenced, yes.

Q. That is what I mean, so that after the strike had commenced and during its pendency, while the sit-downers were still on the property, reports were made to the general membership of the union as to the negotiations which the union representatives were carrying on with management looking to a settlement of the strike?

A. While the strike was going on, yes.

Q. Were you employed in any mill on May 6th, 1937?

A. I was a full-time officer for the union.

Q. Oh, and you were a salaried officer at the time?

A. That is right.

Q. And Leader was the president of the union?

A. That is right.

Q. And he was the officer who negotiated all of the union agreements in Philadelphia, along with

you or other officers, during 1937, but, particularly, he was the one officer who always signed those agreements, wasn't he?

A. That is right.

BY THE COURT:

Q. Who was?

MR. HIRSCH:

That is all.

A. Leader.

MR. HIRSCH:

William Leader. William Etter. Is Etter here? Will you arrange to have him come down? Allen Harper.

J. ALLEN HARPER, having been duly sworn, was examined and testified as follows:

Direct Examination

BY MR. HIRSCH:

Q. Mr. Harper, you are an employee of the Apex Hosiery Company?

A. I am.

Q. And have been for how many years?

A. About seventeen.

Q. And what is your position with the company?

A. At present, maintenance engineer.

Q. And you were the maintenance engineer on May 6th, 1937?

A. I was.

Q. And for the period following that date?

A. Yes.

Q. You were working at the plant on May 6th, 1937?

A. I was.

Q. What, if anything unusual happened outside the Apex premises prior to May 6th, 1937, that you observed?

A. Well, on May 4th we observed bricks planted across the street—

MR. SYME:

I object to that, Your Honor.

THE COURT:

Yes, I ruled that out yesterday, unless you have—

MR. HIRSCH:

I hope to tie it in a little better than yesterday with this witness. I mean, there is a conversation—

THE COURT:

Oh, if you want to make an offer, all right, if counsel call for an offer. If not, I will take the evidence. I don't think it makes much difference. It has already been before the jury.

MR. HIRSCH:

All right, well, I will pass that for the moment.

THE COURT:

Now, I think the evidence of the occurrences there has been covered pretty completely.

MR. HIRSCH:

All right.

THE COURT:

I wish you wouldn't—

MR. HIRSCH:

I won't go into that. I didn't intend to.

THE COURT:

—cumulate on that. You have had two days of that. You could probably call any number of witnesses, and it is just as well to get on to the other questions in the case.

BY MR. HIRSCH:

Q. You have heard the testimony of previous witnesses, you have been in court,—

A. I have.

Q. —as to what occurred?

A. I did.

Q. And did you hear the testimony as to the presence of Mr. Leader outside and inside the plant on May 6th?

A. I did.

Q. Does that coincide with your knowledge of the facts?

A. It does.

Q. And your testimony if given would be similar to the other witness'?

A. Yes. I even spoke to Mr. Syme that day inside and when he come through the office with Leader.

Q. What did you see Leader do that day after they were inside?

A. After they was inside I—

MR. SYME:

Your Honor, you have already ruled out this and we are going through—

MR. HIRSCH:

Is it agreed that this witness also heard Mr. Leader address the sit-downers and tell them the union would provide the cots—

MR. SYME:

You have asked the man whether he heard the other witnesses testify—

THE COURT:

I don't think I will hear it unless the witness has something different to say—

MR. HIRSCH:

All right.

THE COURT:

—than what the other witnesses have said. If there is any dispute about those facts you can recall some of these witnesses.

MR. HIRSCH:

All right, that will be satisfactory.

BY THE COURT:

Q. Is there anything that you want to add that you found different—don't repeat what Mr. Meyer and the other witnesses said, but is there anything that you saw that they didn't see—

A. At that—

Q. —or testified to?

A. At that time I started to close up the windows and board up the door, the front door and the windows, when Mr. Leader was on the table there.

BY MR. HIRSCH:

Q. Well, is your recollection of what he said to the sit-downers any different than that—

A. Not a bit.
Q. —that has been given?
A. It is just the same.

MR. HIRSCH:
All right.

THE COURT:
All right.

BY MR. HIRSCH:
Q. Now, what, if anything, did you see occur that day while you were still on the premises with regard to hosiery that was on the premises?
A. Well, I seen hosiery that evening being throwed out the second floor windows and—
Q. By whom?

MR. SIMONS:
Wait a second,—

A. Well, that I couldn't just tell, as to who, but it was the sit-downers were in there at the time, and outsiders.

MR. SIMONS:
—may I object to that, if Your Honor please, and ask that it be stricken from the record. There is no identification as to who did that, with a crowd of that kind.

THE COURT:
I will deny the motion.

BY MR. HIRSCH:
Q. What time did this occur?
A. Well, I was there until half past nine that night and those things were going on right along

up until that time. There was people walking out with it, right at the doors, and the greige hosiery was being throwed out from the second floor windows to the people on the Fifth Street pavement.

Q. Now, who remained in the mill that you saw that night, how many persons, before you left?

A. Well, there was about, I judge, two hundred and fifty, at least, outsiders, and some of our own employees, that was in as the sit-downers.

Q. Now, did you go on the property from day to day during the period of the sit-down strike?

A. I did.

Q. And what were your duties when you went upon the property during the period of the sit-down strike?

A. Well,—

Q. By whose permission did you go on the property? By whose permission did you go on the property?

A. Well, I had to get permission from the sit-downers to get in and from the union officials that were at the gates. I couldn't get in no other way.

Q. And what were your duties when you did get in?

A. To watch after the fire and keep the pumps and things running there.

Q. In other words, to see that the pressure was on,—

A. That is right.

Q. —so that the—

A. Look after the pumps, ice machines and stuff like that, and then, of course, the watchman come under me, too, to get around every hour.

Q. Now, when after May 6th did you next see Mr. Leader, and under what circumstances?

A. May 7th he was there.

Q. With whom?

A. Well, he come in, but I—he went outside into the wareroom. I didn't see what took place outside, with the exceptions of a—right there at the doorway, Mr. Wiley, the insurance inspector, come in, he was introduced to Wiley as the man in charge of the sit-down strike.

Q. Was it Wiley or Walters?

A. Mr. Walters, Mr. Walters.

Q. He was introduced to Mr. Walters?

A. Mr. Walters.

Q. By whom?

A. By O'Driscoll.

Q. What did O'Driscoll say? This was in your presence?

A. This was right close, right where I wasn't more than five feet away from him when he done it.

Q. What did you hear O'Driscoll say?

A. I was with the inspector at the time.

Q. What did you hear O'Driscoll say?

A. O'Driscoll said, "This is Mr. Leader. He is in charge of the sit-down strike".

Q. And what did Mr. Leader do when he was thus introduced? Did he accept the introduction?

A. Why, he accepted the introduction to Mr.—sure.

Q. Now, then, you have heard the testimony about changes of the locks and keys on the various entrances?

A. That is right.

THE COURT:

Oh, you don't even need to do that, Mr. Hirsch. Just go ahead.

BY MR. HIRSCH:

Q. Did you from time to time make an examination of the premises to determine what, if anything, was happening to the plant,—

A. I did.

Q. —equipment and machinery?

A. Daily.

Q. And on those occasions did you make any memorandums—

A. I made—

Q. —of the damage you found?

A. I did.

Q. Prior to May 6th what was the condition of the premises in so far as repair or disrepair was concerned?

A. First-class shape.

Q. Was there anything on that day, that is, prior to or on the morning of May 6th, 1937, in the plant which was damaged or in a state of disrepair requiring repairing?

A. No, sir, everything was first-class in that plant.

Q. And any damage that you made a record of on these daily inspections was new damage which occurred after May 6th?

A. That is right.

Q. And during the period that the sit-down strikers were on the premises?

A. That is right.

Q. Did you retain these memos—

A. Yes.

Q. —that you made?

A. I gave a copy of them to my superior boss there, Mr. Struve.

Q. And were those memos in your own handwriting?

A. They absolutely were.

Q. And did you at my request deliver them to me?

A. Indeed I did.

Q. I show you a number of memorandums and ask whether or not these memorandums were delivered by you to me. First, answer, were they the memorandums you delivered to me?

MR. SIMONS:

Have you typewritten ones, too?

MR. HIRSCH:

Yes, I will cover that in a minute.

(Papers were shown to the witness.)

THE COURT:

What are these, memoranda of damage?

MR. HIRSCH:

Yes, sir.

THE COURT:

All right.

MR. HIRSCH:

Made by this witness in his own handwriting, and then there are some typewritten sheets which I will cover in a minute.

THE COURT:

All right.

A. That is right.

BY MR. HIRSCH:

Q. And are the memorandums which are in handwriting in your handwriting?

A. They are.

Q. And who prepared the typewritten memorandums?

A. I did.

Q. When?

A. From these.

Q. From these?

A. That is right.

Q. And were they prepared at the time or almost—

A. Well, it was right after it.

Q. Yes.

A. It was around that time.

Q. I mean, they weren't recently prepared?

A. Oh, no, no; at the time, generally the day or the day after.

Q. Now, then, will you by refreshing your memory from looking at those memos tell us chronologically by date the damage which you found in making your rounds of the Apex premises which did not exist on the morning or prior to the morning of May 6th, 1937?

A. The evening of May 6th—do you want me to go right through them?

Q. Whatever you have.

A. The evening of May 6th they broke in the shop in the basement. They broke open the drawers and took—

Q. When you say "they", you mean the sit-downers in each instance?

A. The sit-downers and the people that were in the mill. The night, that is, the evening of May 6th after we left, this happened.

MR. SYME:

Your Honor, I object to this form. I mean, I

have no objection to his reading from his former—

THE COURT:

Yes, just say what the damage was,—

MR. SYME:

That is right.

THE COURT:

—if you found it broken open.

MR. HIRSCH:

And what you found.

THE COURT:

Objection is made to your saying who did it, do you see?

THE WITNESS:

All right.

THE COURT:

Just say what you found.

A. (Continued) They broke—well, the drawers of the knitters' tables were broken open. A knitter's table is in between the aisles, in between the machine and the aisle, where the knitters work. They were forced open and, of course, things taken out of them.

A switchboard, on May 6th, that was tore out, and we had to put back into shape. They tore it out again that evening. They also damaged—

THE COURT:

Now, wait a minute,—

MR. SYME:

Your Honor,—

THE COURT:
—you will have to—

THE WITNESS:
That is right.

THE COURT:
It doesn't really make much difference,—

THE WITNESS:
That is right.

THE COURT:
—but put it in the passive—

THE WITNESS:
All right, excuse me.

THE COURT:
—voice.

A. (Continued) The benches were broke in the yard, and also into the watchman's shanty, that was broke open in the yard.

This thing is kind of twisted up here a little. Could I just go over these according to the dates they are, the way they are put here?

THE COURT:
Oh, yes; what difference does it make—

MR. HIRSCH:
Go ahead.

THE COURT:
—whether you put them in chronological order or not. Go right through them.

A. (Continued) On May—

THE COURT:

By the way, you haven't had any daily copy, but when you get to this itemization of damages, I am going to ask the stenographer to give me a copy of the testimony.

MR. HIRSCH:

All right.

A. (Continued) May 27th, the door to the roof was tore off. Large glass table top was broke on the first floor.

Thursday afternoon, May 27th, window frame was broke in the northeast corner of number 5 building, and they forced two window frames to the dye house.

Thursday afternoon, May 27th—well, this is the forcing of the two window frames into the dye house.

May 28th, the half hose cabinet was broke into, and, of course, I walked out through the floor there, I seen it, and where they kept the seconds, the cabinets where they kept the second hosiery in, that was broke into. I relocked them cabinets.

May 29th, they broke the counters on the—that is, the counters were broken on the examining tables on the second floor.

June 7th, stockings were pressed off the machines.

BY MR. HIRSCH:

Q. What does that mean?

A. Well, the stockings weren't completely finished on the machine at the time that the knitters went out, there was maybe half or two-thirds of the stocking on, and these were pressed off by somebody

moving the machine. When they moved the machine, naturally, why, the work went off. That was a loss.

Q. Go ahead.

A. May 26th, the big gate was broke to the inner yard.

May 27th, they tore the doors off again to the roof. At those times I had the carpenters there, I had them place them back on again, that is, to nail them shut, so there was no access to the roof, only by those that had a key to the roof.

June 8th, Mr. Meyer's desk was broken open and cigars were taken out, and also the light was tore out of his office and taken to the outside.

Wednesday night, June the 9th, 298 metal separators on the spinning machines in the old mill was damaged. Now, a separator there is a piece of metal that goes between the spools that spin the silk, the silk that is brought down from single strands to whatever strands they are making, if it be four, five, six, and in between each one of these spools is a metal separator to keep the silk from flying from one side to the other.

Q. 298 of those were broken?

A. 298.

Q. Or bent, I mean.

A. Were bent, yes. Some were broke right off.

June 10th, June 10th, that was Thursday, about eleven o'clock, I heard a conversation there on the floor—

Q. Who was in the group?

A. What is that?

Q Who was in that conversation?

A. Why, that was amongst the sit-downers and Bill Etter.

Q. William Etter?

A. William Etter, yes, and that is when I first found out—

MR. SIMONS:

If Your Honor please,—wait a second—I object to the conversation or anything that took place at that time.

THE COURT:

No, it is all right this time.

THE WITNESS:

Yes, sir, this is—

MR. HIRSCH:

Wait a minute.

THE COURT:

If you want an offer—I don't know what the conversation is.

MR. SIMONS:

I don't, either, and I am objecting to it merely because it is a conversation among the men there.

MR. HIRSCH:

With William Etter.

THE COURT:

Well, William Etter, there is evidence that he was in charge of the men there and authorized to control the situation. I will permit it in view of the fact of William Etter's presence.

MR. SIMONS:

You will note my objection?

THE COURT:

Yes, all right.

BY THE COURT:

Q. What was heard, what did you hear?

A. Why, I heard them speaking about the damage that was done on the knitting machines on the floor, fourth floor.

Q. Yes.

A. So we went up and took a look at that.

BY MR. HIRSCH:

Q. Was that the first intimation you had that those machines had been damaged?

A. That is right.

Q. That was June 10th?

A. Yes, that was June 10th, and in the morning of June 10th is when I found out that the separators were broke, but they were broke June 9th,—

Q. Go ahead.

A. —the night of June 9th.

THE COURT:

Well, go ahead.

THE WITNESS:

And I made a list of the damage that was done at that time.

BY MR. HIRSCH:

Q. Is that a typewritten list?

A. It first was in pencil, and then typewritten.

BY THE COURT:

Q. Now, can't you summarize your typewritten list,—

A. Yes.

Q. —without giving us every item?

A. That is right. There was 275 heads were smashed on the machines, and 42 picot bars.

BY MR. HIRSCH:

Q. How many machines were damaged?

A. Twenty-eight on the fourth floor.

Q. What kind of machines were they?

A. Knitting machines.

Q. Yes, by "knitting" you mean legging machines?

A. Legging machines, yes.

Q. Go ahead.

A. And footers, there was two damaged.

Q. And where were the footers located?

A. Why, on the third floor.

Q. Do you have the numbers of those machines?

A. I have the numbers of the machines.

Q. Give us the numbers of the machines that were damaged.

A. All right.

Q. First, take the twenty-eight leggers.

THE COURT:

Oh, well, can't we put those in—

THE WITNESS:

It is all listed here.

THE COURT:

Why doesn't he offer just his memorandum?

MR. HIRSCH:

Let me see that.

THE COURT:

I don't think there would be any objection to it, as his testimony, that is all.

MR. HIRSCH:

All right, I offer this in evidence as Plaintiff's Exhibit number 12, two sheets showing the dam-

age to the twenty-eight leggers, showing the numbers and nature of damage to twenty-eight leggers and two footers as found by the witness on June 10th, 1937.

(Summary of damage to leggers and footers on June 19th, 1937, compiled by Mr. Harper, was marked Exhibit P-12. A copy thereof follows:

Exhibit P-12—Summary of Damage to Leggers and Footers

"209	H-3 to 10, 12 to 19.	16	245	H-6 to 10	5
	PB-12 to 16	5		PB-7 to 10	4
210	H-14 to 20	7	246	H-14 to 20	7
	PB-15, 16	2		PB-	
211	H-1 to 18	18	247		
212	H-0		248		
	PB-1 to 8, 14 to 20.	15			
213			249	H-14 to 20	7
214			250	H-6 to 11	6
215	H-1 to 17	17	251		
216	H-1 to 20	20	252		
		225			50
		38			4

Total heads 4th fl. 275
Total P. B. 4th. fl. 42
Total Leggers Damaged 28

3rd. Floor No. 1 Bldg.

37	H-17 to 20	4
38	H-1 to 6	6
		10

Total heads 3rd fl. 10
Total Footers Damaged 2

4th. Floor No. 1 Bldg. North.

181			217		
182			218		
183			219		
184			220		
185			221	H-5 to 9	5
186			222	H-1 to 15	15
187			223		
188			224		
189			225		
190			226		
191	H-4 to 13	10	227		
192	H-8 to 20	12	228		
193	H-1 to 12	12	229	H-1 to 4-13	5
194	H-11 to 20.	10	230		
195	H-1 to 10	10	231		
196	H-11 to 20	10	232		
	PB-11 to 19	9			
197	H-1 to 6	6	233		
198	H-14 to 20	7	234		
199	H-7, 9, 10	3	235		
	PB-1, 2, 5, 8, 10, 11, 12.	7			
200	H-11 to 20	10	236		
201			237		
202			238		
203			239		
204	H-14 to 20	7	240		
205	H-6 to 16	11	241		
206	H-8 to 20	13	242		
207	H-3 to 15	13	243		
208	H-8 to 20	13	244	")	

BY THE COURT:

Q. Can you give us a general description of what kind of damage it was?

A. Yes, sir, it is right there. There is the total heads on the machine, that is, the knitting heads.

MR. HIRSCH:

Keep your voice up. These people would also like to hear, so talk to both sides.

BY THE COURT:

Q. What did it show had been done? Had it been unscrewed?

A. They were smashed.

Q. Smashed?

A. That is right, the needles were damaged, and the picot bars. The needles were damaged and some of the picot bars were damaged.

Q. Can those machines be smashed with the naked hand?

A. No, sir, you would have to use a tool of some kind to do it.

Q. Yes.

A. Or it could be smashed through turning the machine and jamming it, running the carrier, bend the carriers down and run them across the needles and the sinkers.

Q. All right.

A. And smash it out that way.

THE COURT:

I just wanted to get a general idea.

BY MR. HIRSCH:

Q. Now, then, after you made this examination and the report of the damage that you found what did you do?

A. On that day, of course, I made this that day on paper.

Q. Go ahead.

A. Wrote it out, and then typewrite it off, but they wouldn't leave us out that night to go home, they held us in the building.

Q. Did you have any conversation about this damage with anyone?

A. Just with Bill Etter, that is all.

Q. What was the conversation? Did this take place after you examined the damage?

A. Yes, I went up there—

Q. What did you say to him and what did he say to you?

A. Well, he couldn't see how it was done, it must have been done while he was asleep, that is all was claimed.

Q. And what else did he say when—you suggested something on that occasion, didn't you?

A. Well, yes, at that time I suggested to bring in a fingerprint expert, to have Mr. Struve bring him in to fingerprint these here separators that they smashed, and he swore at that time and said, "I forget to wipe them off." Now,—

BY THE COURT:

Q. Who said that?

A. Bill Etter.

Q. Yes.

A. And I left it go at that, as though I didn't hear it.

Q. Well, was that a joke or was he serious about it?

A. No, he was absolutely serious about it at the time. That was before I found out that the knit-

ting machines were smashed. Then after the knitting machines were smashed and we looked at them—

BY MR. HIRSCH:

Q. Well, now, let's come back—what did he actually say? I don't want you to be profane,—

A. Well,—

Q. —but what were his actual words?

A. Well, he swore there—if it is all right to say it I can say it.

THE COURT:

Go ahead, tell us what he said.

A. (Continued) All right, he says, "Jesus Christ, I forgot to wipe them off", see, when I spoke to him about getting a fingerprint expert in, and, of course, I walked away from him at that time, but that night he wouldn't leave us out, and so they made us be fingerprinted before we could go out, before they would leave us out, they had a pad there, and, of course, he made each one of us be fingerprinted, that is, all the watchmen, before we could go out, on just plain paper.

BY MR. HIRSCH:

Q. Now, what happened after June 10th for which you have memorandums?

A. Why, here I have one, June 15th, there was a new lock placed on the—

Q. Before I get into that, I beg your pardon, were these machines which you found damaged on June 10th in good condition prior to that date?

A. Oh, yes, absolutely.

Q. All right, go ahead.

THE COURT:

It is understood that all the damage you are reporting was new damage?

THE WITNESS:

That is new damage.

MR. HIRSCH:

All, right, I won't ask the question again.

THE COURT:

Now, don't need to repeat that. Don't report anything that wasn't new.

A. (Continued) Well, June 15th, there was a new lock placed on the annex door on the second floor, where the watchman had to go through to ring up his clock, and, of course, we couldn't get through there no more. That is an inside door.

Number 226, on the fourth floor, June 14th, they pressed off the work.

June 13th, door to the sixth floor stairway was forced open.

June 15th, ceiling light broken, south end of basement.

May 29th, here, there was three counters broken on the examining tables. A counter is a machine put on there to count the work after it has been turned and examined.

Monday, night, May 17th, the doors was broke to the roof, again.

Sunday night, May 23rd, clock and equipment in the watchman's shanty was tore out and smashed.

Tuesday night, May 25th, light and telephone in basement yarn department was smashed.

May 14th at five A. M., Friday morning, I had a call from the engineer that the sit-downers broke into the old mill through the second floor.

BY MR. HIRSCH:

Q. What did you do?

A. Well, the only thing you could do was go down.

Q. Did you see that?

A. I went down to see what happened.

Q. Had that happened?.

A. Yes, it had.

Q. Go ahead.

THE COURT:

Have you got the record of the injunction proceeding? May I see it? Go right ahead.

THE WITNESS:

These slips here are the slips of the repairs that was given with this when we repaired the—

MR. HIRSCH:

Well, hold those out for the moment. Just tell us the damage now.

THE WITNESS:

And these here are reports where the engineer called me for different things.

MR. HIRSCH:

Well, keep those out, keep everything out that doesn't refer to damage.

THE COURT:

Yes, I wouldn't bother about electric light bulbs and that sort of thing.

THE WITNESS:
Watchmen's reports.

MR. HIRSCH:
All right.

BY MR. HIRSCH:

Q. Now, coming back to the damage to the machinery on June 10th, as you found it to be, to what extent were they damaged? Could they be operated?

A. No, they could not, the machines could not be operated because the needles were all smashed in them, the heads of the picot bars and stuff were—

Q. Did that necessitate an important or a minor repair?

A. Oh, that is an important repair.

Q. Now, during the period that you made these examinations and during the period that you were looking after the property from day to day as the maintenance man on the place did you see the sit-downers take any care of the machinery?

A. Oh, no.

Q. Did you see them do anything to keep them in good order and repair?

A. No.

Q. Were you on the premises on June 23, 1937, when the sit-downers evacuated the plant?

A. Not the day they evacuated, but—

Q. When was the last day you were there?

A. —the day before.

Q. That is June 22nd?

A. Yes.

Q. Were you able to get in the mill on that day?

A. I got into the mill on that day and when I—I

come in through the Rising Sun entrance, and when I got to the first floor into the boarding room there was a group of the youngsters there crying. I asked them what was wrong. They said, "We want to get out of here."

I said, "Why, now?", and they says to me, "Harper, if you knowed what happened—

MR. SIMONS:
If Your Honor please,—

A. —in here last night—

MR. SIMONS:
Wait a second, I object to this conversation.

BY MR. HIRSCH:
Q. Was this conversation with the sit-downers?
A. It is the sit-downers.

MR. HIRSCH:
I think it is relevant, sir. We have them here—

THE COURT:
Better make an offer; if it is important, make an offer.

MR. HIRSCH:
Well, it isn't that important.

THE COURT:
All right.

BY MR. HIRSCH:
Q. As a result of what they told you you learned immediately that certain damage had been done?
A. That is right.

Q. Now, then, what did you do after you had learned that?

A. Well, while I was standing there Mr. O'Driscoll come in, he talked to them, and he asked me to speak to them to try and quiet them down.

Q. What else did you see going on on the first floor at that time?

A. Well, they were running around all over the floor there, some of them, there was two factions in there at that time.

Q. Now, the order of the Circuit Court had been made the day before, is that correct?

A. That is right.

Q. Were you permitted to go up and make an examination of this damage of which you learned—

A. Oh, no.

Q. —on that day?

A. No, indeed.

Q. Who refused to let you go up?

A. Sit-downers.

Q. Did you ask to go up or attempt to go up and were stopped?

A. Yes, but you couldn't—I couldn't get out of that office after I once got into that office, but there was several of the watchmen that made a round, that got around in on there.

Q. And what did you do?

A. They come down to me, the carpenter come down that was making the rounds, and he says, "For God's sake, can't you—

MR. SIMONS:

Wait a second, I object—

MR. HIRSCH:

Now, leave out that conversation.

BY MR. HIRSCH:

Q. Just tell us what was going on on the first floor where they permitted you to be. What did you see the sit-downers doing in the office or any other place?

A. Well, they were walking around with clubs and different things preparing for when the police come down to put them out.

MR. SIMONS:

I object to that.

BY MR. HIRSCH:

Q. How do you know that?

A. Why, because I heard the conversation.

MR. SIMONS:

Wait a second, I object to conversations had with those people.

THE COURT:

Well, I don't think we need go into it.

BY THE COURT:

Q. They did go out the next day, did they?

A. They went out the next day.

Q. That was June 23rd.

MR. SIMONS:

And they went out of their own accord, and I think that should be put on the record, too.

MR. HIRSCH:

Well, as long as that is being put on the record we will show—

THE COURT:
Now, gentlemen,—

MR. HIRSCH:
—they didn't.

THE COURT:
—what is the use talking about it, that they went out of their own accord; they went out under the order of the Court.

MR. HIRSCH:
Of course.

THE COURT:
All right, go ahead.

BY MR. HIRSCH:
Q. Now, after you left the office where did you go?
A. I was herded into the yard.
Q. By whom?
A. The sit-downers.
Q. And what, if anything, did you hear or see when you got out into the yard?
A. Well, I heard the machines being smashed. I heard—you could hear the stuff being smashed right over there.

MR. SIMONS:
I object to that, if Your Honor please.

MR. HIRSCH:
That is not objectionable.

MR. SIMONS:
Well, now, I think we are getting into a lot of testimony that certainly is absolutely inac-

curate, and is merely guesses and surmises on the witness's part.

THE COURT:

Well, I think the witness can describe what the sounds were.

MR. SIMONS:

He can describe sounds if he heard any sounds,—

THE WITNESS:

Well, I did hear the sounds.

MR. SIMONS:

—not his assumption as to what happened.

BY THE COURT:

Q. Well, what did you hear?

A. I heard the sounds of the machines being smashed, and heavy stuff falling on the floor as it was being smashed.

Q. All right.

A. But I wasn't allowed to go upstairs to stop it, I couldn't leave that yard, and any of the sit-downers here, why, they can certainly tell you that I couldn't leave it, because they were walking around with guns in their pockets and blackjacks, brass knuckles, clubs, and stuff like that. A man isn't going to stand up in front of that, after you seen what happened there to the other ones, to try to defy them, that you are going up. Why, they would only kill you in there.

BY MR. HIRSCH:

Q. Now, several days later, or after they evacuated, you went up, did you not?

A. I did.

Q. And did you find—

A. The day that they evacuated the United States Marshal took me back and put me in the plant, after they were out.

Q. The same day?

A. That same day, and the—

Q. Did you then make an examination of this damage that you heard?

A. I did, but before I—before I was put into that mill the Marshal told me to stay in the car until he went over and spoke there to the ones that were in charge outside at the picket line, because you couldn't get through, and he did, and they agreed to leave me go in with another man, providing that I would take some of their men in with me and get their cots and belongings out, which I agreed to, and, of course, I took in two men, and the first thing we did, we went to the sixth floor and started coming down through the building.

Q. You did?

A. With the two men that were sit-downers in the place, to get their stuff out. I got the union's truck—they wanted me to bring the stuff out on Rising Sun Avenue, out the center gate, and I told them I would prefer to have their truck backed into our elevator entrance, because there is a steel door there that we have, it closed it, and we would load these cots and stuff in—

Q. Well, I don't want to cut you short on that, but the stuff was taken out. Now, I would like to direct you to damage that you found.

A. Yes, but the stuff wasn't taken out.

Q. Well, it isn't important to this issue whether it was or wasn't. Let's get down to the question of

damage, Did you make an examination on June 23rd,—

A. Yes, I did.

Q. —when you went in after the sit-downers evacuated?

A. That is right, I did.

Q. Now, what new damage did you find?

A. Well, there was an awful lot of machines smashed.

Q. Did you make a record of it at the time?

A. I did make a record. I made a record of that damage, and these machines also that were smashed. The two men that were in with me from the sit-downers, they seen it at the same time.

Q. Now, will you look at your memorandum of the new machinery damage which you found—.

A. Yes.

Q. —on June 23rd, 1937, in your own handwriting, and which you noted in your own handwriting?

A. That isn't here.

Q. Well, I have a photostat. I don't know where the—you did make a memorandum on that day?

A. Oh, indeed I did.

Q. In your own handwriting?

A. Just roughly, of the damage.

MR. SIMONS:

I don't know anything about this.

MR. HIRSCH:

Neither do I. I will ask him about it.

BY MR. HIRSCH:

Q. Will you tell us whether this is a photostatic copy of the memorandum that you made covering the damage on June 23, 1937?

(The witness examined the papers).

A. That is right.

BY MR. HIRSCH:

Q. Is that in your—

A. This is my handwriting.

Q. That is in your handwriting. Now, looking at that memorandum that is in your handwriting, tell His Honor and the members of the jury how many machines, how many additional machines were smashed as you found them to be—

A. I would have to check—

Q. —on June 23, 1937.

A. I would have to check over this to see that, because they aren't listed here.

Q. Well,—

BY THE COURT:

Q. How many were there, can't you tell us? Can you give us a general description of what kind of damage was done,—

A. Why, yes.

Q. —the new damage?

A. This is the new damage. Well, your take-up rollers were taken off, the narrowing machines, the arms were broke, and the narrowing machines dropped down to the floor, needles broke out, heads, picot bars, everything that you could think of on the machines; even part of the castings were broke.

BY MR. HIRSCH:

Q. These are machines in addition to the thirty machines you described as being damaged—

A. That is right.

Q. —on June 10th?

A. That is right.

Q. Do you recall based on your recollection about how many machines there were? Don't guess if you don't recall.

A. I—

Q. Could you tell if you look at that?

A. If I check up on here I would naturally have it.

THE COURT:

Well, we will recess shortly and he will have a chance to do that.

THE WITNESS:

Yes.

BY THE COURT:

Q. Was it more damage than—

A: Oh, yes, this was all through the mill, then.

Q. This was the principal damage, was it?

A. This was the main damage to the machines.

THE COURT:

Yes.

MR. HIRSCH:

We have a record of the number, and we will show that.

THE COURT:

That is all right. He can do it during recess.

THE WITNESS:

Of course, I took just a rough check on this here, understand, there was things that were wrong on those machines when we come to put them together.

MR. HIRSCH:

I am only asking you as to the number of machines that were damaged—

THE WITNESS:

All right.

MR. HIRSCH:

—in addition to those that were damaged on June 10th. Well, will you look at that during the recess?

BY MR. HIRSCH:

Q. We will go on meanwhile with the rest of the examination. Now, you have heard the testimony of other witnesses that during the period of the sit-down strike the mill was in the sole possession and control of the sit-downers, is that correct?

A. That is correct.

MR. HIRSCH:

I want that because—

THE COURT:

Well, suppose at this point we recess for ten minutes.

(Recess at 11:10 o'clock A. M.)

J. ALLEN HARPER, resumed.

Direct Examination (Continued)

BY MR. HIRSCH:

Q. Now, then, directing your attention back to

the damage of the machines as you found it on June 23, 1937 during your inspection immediately following the evacuation of the plant by the sit-downers, are you able to tell us how many additional machines were damaged?

A. According to these records, approximately a hundred additional machines.

Q. And that was in addition to the thirty that had been previously damaged?

A. Yes.

Q. And was the damage on those hundred machines of a serious or of a minor nature,—

A. Serious.

Q. —as far as you observed? Could any of them be worked after they were damaged?

A. Oh, no.

Q. —without being repaired?

A. No, indeed.

Q. Now, during the period of the sit-down strike did you see any signs or placards on the building outside?

A. I did.

Q. I show you a photograph and ask if this correctly depicts the outside condition of the factory at the main entrance at Fifth and Luzerne Streets during the period of the sit-down strike,—

THE COURT:

Let me see it.

BY MR. HIRSCH:

Q. —as you saw it.

(The witness examined the photograph.)

A. That is right.

THE COURT:

Well, don't you think we have covered that ground so thoroughly, now, we all know that Mr. Leader was president of the union, and it seems to me that certainly a prima facie case has been established that the union authorized and maintained or adopted, at any rate, the sit-down strike; now, is there any use piling up evidence on that?

MR. HIRSCH:

I only wanted to offer it—

THE COURT:

If it is disputed, if the defendants take the position that the sit-down strike was not authorized by the union, or not ratified or adopted by it, then I will permit you to call any amount of rebuttal testimony that you may have,—

MR. HIRSCH:

That is satisfactory, sir.

THE COURT:

—but I don't think we need pile up on that point.

MR. HIRSCH:

That is satisfactory, sir.

Now, I would like to offer in evidence the memoranda which were made in this witness's own handwriting of the damage which he saw and recorded, in corroboration of his testimony. I offer them as a group exhibit, Plaintiff's Exhibit number 13.

I will do it this way: I will offer as Exhibit 13 the small handwritten memorandums of the wit-

ness covering damages found by him on various dates during the sit-down strike, and as Exhibit 14 the photostat of the memorandums he made of the damage he found on the premises to the machines on June 23, 1937, when he entered on the property after the sit-downers has evacuated.

(Handwritten memoranda of Mr. Harper relating to damages found on various dates during the sit-down strike were marked Exhibit P-13. Copies of these memoranda follow:

Exhibit P-13

"Thursday Eve. May 6—
Broke in Shop in Basement. Broke open all tool Drawers.

Broke in Drawers on Knitters Tables in isles between Machines.

Disconnected Main Telephone Switchboard.

Thursday Eve. May 6—
Broke into Cage in Basement. Broke open all tool drawers.

Wed. Night Broke 5 Benches in up yard, also booth. Burned same in Insinnerator Thursday May 26.

Cut.—Lead cabel on Fence to Bell Lines (cut. large Hole through fence.

May 14/37
5. AM Friday Morning call from engineer Sit downers broke in to old Mill through 2nd floor.

Replaced lock with there own giving key for watchman.

Monday Night May 17
Broke 2 Doors to Roof.

Sunday Night May 23
Smashed Recording Clock and Equipment in Watchmans Booth in yard.

Tuesday Night May 25
Toor off light and smashed Telephones. Basement.

Monday Night May 17
Broke Doors to Roof.

Sunday Night May 23 Clock & Equip in watchmans shanty.

Tues Night May 25 light and Telephones in Basement—Yarn Dept.

May 26—Broke Big Gate to Inner Yard.

May 26—Wed Broke Big Gate to Inner Yard.

Thursday May 27 Broke Door to Roof Toor off casing.

Broke large glass tabel top. 1st floor 7/8 x 42" x 8'-0".

Thursday Afternoon May 27—Broke window frame North East Corner 2nd floor No. 5 Bldg.

Forced 2 steel windows frames to Dye House.

Thursday Afternoon May 27—Broke Window Frame North East corner 2nd floor No. 5 Bldg.

Forced—2 windows Steel Frames to Dye House.

Thursday Evening May 27—Broke Door to Roof. Center toor of casing.

Broke large glass tabel top. South End No. 1 Mill.

Locked cabinets May 28/37.

Friday afternoon. Where half hose & Seconds where in.

Saturday morning May 29 found 3 counters on examining tabels 2nd floor Broken.

Saturday May 29—found counters on Examining Tabels broken 3.

75—3rd Press off stockings.

Monday Morning discovered June 7th 37 fixed same up.

June 8/37 (Tuesday Night)—In Mr. Meyer's Office took Cigars from Box also took—full can of Cigars—

Removed light from Desk.

June 9/37 Wednesday Night.

Bent over 298 Metal Separators on Spinning Machines—4th old Mill or No. 2 Bldg.

June 10/37 Thursday about 11 00 smashed needles knitting Machines 4th floor.

Thursday afternoon smashed needles 3rd floor.

Sunday Night June 13/37 Door to 6th floor South End Store Room forced open.

226—4th press off Monday Night.

June 14—Smitty reported.

June 15—Tuesday night.

Celling light broken in South End basement.

June 15 Tuesday Eve.

Lock placed on second floor Door to Anix.

Carpenter fixed steeple for lock.")

Photostatic copies of memoranda made by Mr. Harper relating to damages noted to machines on June 23rd, 1937 were marked Exhibit P-14. Copies of these memoranda follow:

Exhibit P-14

"6th Floor

1—Narrowing Mach (Lock stich) (picot)
2— " Mach (picot Bar 1) needles
Bent carriers
3— " " " " needles
4— " fingers "
5— needles
6—OK
7—OK
8—OK
9—OK
10—carrier fingers sinkes needles
11—OK
12—OK
13—OK
14—OK
15—OK
16—OK

17—OK
18—OK
19—OK
20—OK
21—OK
22—OK
23—OK
23—OK
25—OK
26—OK

#	27—OK	74—OK
	28—OK	73—OK
	29—OK	72—OK
	30—OK	71—needles
	31—OK	70—OK
	32—OK	69—OK
	33—OK	68—OK
	34—OK	67—OK
	35—OK	66—needles
	36—OK	65—OK
	37—needles	64—OK

38—needles picot narr. points
39—needles
40—needles picot nar. points wing
41—needles picot sinkers

42—OK	75—needles & picot nar. mach
43—OK	76—needles & picot nar. mach.
44—needles? 10'	
45—OK	
46—OK	77—OK
47—Picot—needles	78—nar. mach.
48—picot	79—OK

49—picot mach. carriers
50
51—needles
52—OK
53—OK
54—needles
55—OK
56—OK
57—needles
58—needles
59—needles
60—OK
61—OK
62—OK
63—needles

80—OK
81—needles picot
82—needles picot
83—OK
84—OK
85—OK
86—needles
87—narr. picot
88—needles picot narr.
89—OK
90—OK

5th floor

172—needles and Picot
171— " & "
170—OK
169—narr. rack index lever
168— " " index lever—clean machine (to if Handsoap
167— " " " " —needles
166—OK
165—OK
173—OK
174—OK
175—OK
176—OK
177—OK
178—OK
179—OK

164—Sinkers—needles—picot narr. points
163— " " narr. points
162—OK
161—OK
160—OK
159—OK
158—narr. pts. picot needles
157—narr. pts. needles
156—narr pts.
155—narr pts.
154— " " needles
153—OK
152—narr pts.
151—OK
150—narr. rack
149—narr rack
148—narr pts. picot needles
147—narr pts. picot needles.

All picot Bars

No. 1 Machine 6ty picot bar Control chaft
No. 2 Picot Bar & Carriers
No. 3 Picot shaft needles
No. 4 Needles I head
No. 5 Needles
10 Carriers & needles
11
12

71 81 Wing narrowing machine needles sinkers & Etc
66
63 82 49 picot shaft

59 76 48 picot shaft
58 75 47 picot shaft
57 86 needles
54 88 41 needles points BR Sinkers & Etc
40 Shot
39 shot
38 shot
51 New Job 37 shot

NOTE looks like cams may be loose

(29)

154
150
149
148
147

24

(29)

172 shot complete whole top
171 shot complete whole top pans and all
(5th)
168 needles and grit put in over all parts (rebuilt)
(167—needle Bar one section)
145
146 sinkers needles & kno

---

94 needles 122
98 123
101 124

107
112
clean 118 glass Labor

126 shot
164 shot
163 shot
158
157
156

155

Clock on floor
4th old mill
silk cut

2nd floor
S w 3 Brackets for spool
Traugh ht Broket off
S W 5 Swift Bracket Broken

---

2 floor loopers

36
39 points
40
61 points
71 points
82 points
85 points
116 points
120 points
96 points
142 points

3rd floor

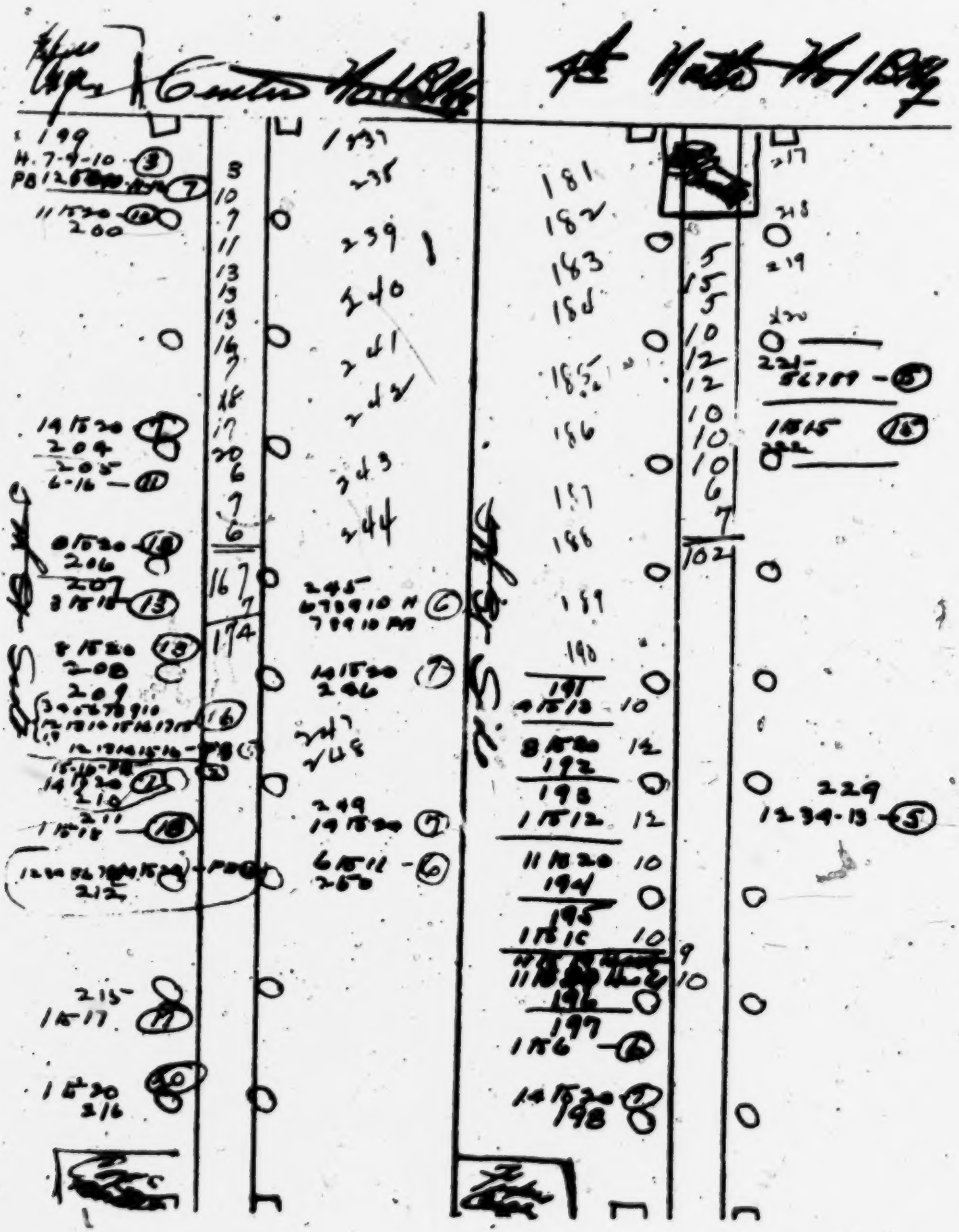
78— Needles
56— Needles
41—42 Needles sinkers
39—38 Needles sinkers

3— 4 needles sinkers
12 needles
13 needles points
18 needles
19—20 needles
22 needles points
23—24 needles points
25 needles
27 needles
29—20 shot
31—32 shot
33—34 shot
35—36 shot points (30)
75— shot
74 shot
66 shot
57 shot

4th

229—needles
222—needles—narrowing points
221—needles
191—needles
192—needles
193—needles
194—needles
195—needles
196—needles
197—needles
198—needles
199—needles
200—needles
201—needles shot
203—needles

204—needles
205—needles
206—needles
207—needles
208—needles
209—needles
210—needles
211—needles
212—needles
215—216 needles points
252—251 needles points
250-249 needles (32)
246—245 needles points)



07 - 17 18 1920 — (4)
38 - 156 — (6)
3rd floor

174
102
276
10
286 - 7 Holes

38 P Bars

Total Footings Damaged
Hundred
Pcs
165

Mgr. 0820w
Wk. $17
Fem.
Atlanta

BY MR. HIRSCH:

Q. Now, in addition to the damage which you described what other damage did you discover on June 23rd? How about the cellar? I was trying to help you.

A. Oh, yes, the pumps in the cellar were damaged. That happened just before they went out, because if they damaged them pumps say four or five hours before they went out the cellar would have been flooded. They are the sump pumps, and they pump the water out from the springs and things below the floor, also the water coming from the ice machine,—

Q. How were the pumps—

A. —from the condensers.

Q. —damaged?

A. Why, they put something through them and broke the brush rigging and all right out of them in the top.

Q. And what other damage did you notice on June 23rd which you had not noticed prior to that date?

A. Well, there was additional clocks smashed, and tore. The big clocks through the center, they were tore down.

Q. What kind of clocks were they, and how big are they?

A. Well, they are, I judge, twenty-four inch face on them, and there is a double face, there is a face on both sides.

Q. Are they the clocks that hang in the middle of each floor where the workers are?

A. That is right, and they hang from the ceiling, they suspend from the ceiling. They were tore right down off from the ceiling and smashed on the floor.

Q. Now, on June 23rd when you went back on the property did you find anything there which was not there during the ordinary and normal operations of the business prior to May 6th?

A. I did, we found clubs and blackjacks, brass knuckles, and different things of that type.

Q. And—

A. Pieces of shafting drilled to make blackjacks out of.

Q. And did you gather them together—

A. I did.

Q. —and put them in a box?

A. I did.

Q. Is the box that is on the floor before the jury the box in which you placed these articles?

A. That is right.

Q. Now, this box was opened here in court today. Did you observe how it was closed, today?

A. Before it was opened I looked at it.

Q. And was that in the same condition as it was when you—

A. It was.

Q. —closed it back in June of '37?

A. It was.

Q. Now, will you open that box and tell us whether these are the things you found, and show them to the jury? These are the things which were never on the premises prior to May 6th, 1937, is that correct?

A. That is right. There is a few brass knuckles.

Q. What is that? Explain that for the lady members.

A. That is a brass knuckle that they put in their hand, and when they hit you with it, why, of course, the damage is done by the front of it.

There is blackjacks, pieces of steel pipe here, made up as clubs.

Q. Show that.

A. This is what they call a blackjack. It has got lead in the side.

Q. What is that steel?

A. Well, that is a piece of shafting that they drilled out. This is the articles that they carried with them when the watchmen went through, and at all times they had different stuff like this with them. They had ropes with different things placed on them, different things made up (indicating).

Q. What is in that rope?

A. There is iron in the end of it, piece of iron in the end of it, that they used. They had baseball bats and things like that that they carried through at all times, that is in there. This hammer that is there was found on one of the machines that was smashed (indicating).

MR. HIRSCH:

I offer that as a total exhibit, Plaintiff's Exhibit number 15.

(Box containing blackjacks, brass knuckles, pipes, etc., was marked Exhibit P-15.)

BY MR. HIRSCH:

Q. Now, what, if anything, did you find left behind by the sit-downers in so far as records and other things were concerned?

A. Why, there was lots of different records there, that they left behind with the sit-downers, names on, the time that they left the building, and the time that they come in, and different cards there with the lost and found, that they had gone through the drawers

there and taken jewelry out, and they had a card posted up to that effect, that is there.

Q. I show you a number of papers and ask you to look at them carefully and tell us whether or not these are the papers which you found on the premises, and then tell us generally, just describe them in general, what they are.

(The witness examined the papers.)

A. This card here was posted up, things that were taken out of the drawers. Steve Middleton there was in charge of that.

BY MR. HIRSCH:

Q. Who was Steve Middleton?

A. He is one of the sit-downers.

Q. All right, now, what else did you find, without going into great detail?

A. These papers here indicate the time that the men went in and out.

Q. These were the sheets kept by the sit-downers, you say?

A. That is right, and each one had a number, see, the sit-downer had a number, because they did most of this work right in the office. I seen this work being done. Their pay papers and stuff were made up in the office.

Q. And these are the sheets that you saw them prepare?

A. Yes, some of them.

Q. And that shows the time of the men, and are there any other sheets there covering committees or anything else?

A. Some of the additional cards that were found in the place.

MR. HIRSCH:

And the witness refers to additional cards.

MR. SYME:

Your Honor, of course, I am not objecting to all of this, but really I think that your previous ruling covers it. I mean, I understand some of these missiles, but I don't see the purpose or the point in all of these notices and communications.

MR. HIRSCH:

Well, I will cut this short very quickly.

BY MR. HIRSCH:

Q. Do you have any small cards there? Did you find these pink cards on the premises (indicating)?

A. That is right, they had trucks there, our work trucks, that they had placed locks on to keep their papers in. Some of these was left in the trucks.

Q. And these are cards with the signature of William Etter which you found there?

A. That is right.

THE COURT:

Well, now, gentlemen,—

MR. HIRSCH:

I am through with that line.

THE COURT:

—I have very definitely expressed what I think about the measure of proofs here.

MR. HIRSCH:

I am through with that line.

THE COURT:

I am not going to foreclose anything, and if

these facts are disputed you can call evidence in rebuttal.

MR. HIRSCH:

Well, let me have these as one group exhibit, then, the matters found on the premises by the witness.

THE WITNESS:

This book here was taken out of our locker.

MR. HIRSCH:

You found that there. That will be a group exhibit, 16.

(Folder containing records and memoranda found on the premises by Mr. Harper was marked Exhibit P-16.)

Cross Examination

BY MR. SYME:

Q. What was your job in the plant prior to May 6th?

A. Maintenance engineer.

Q. Maintenance engineer. What duties do you have as the maintenance engineer?

A. I cover all maintenance in the plant with the exceptions of the machinery.

Q. I see.

A. That is, of the knitting machines, but I place the machines when they are put in new, I lay out the lines and things for the setting of the machinery.

Q. But you don't take care of the knitting machinery,—

A. Only—

Q. —or you didn't take care of it?

A. Only the electrical equipment on the machines.

Q. That is right, but you don't take care of any of the knitting machines and didn't take care of any of the knitting machines prior to May 6th or subsequent thereto, is that right?

A. No, I don't take care of them.

Q. That is right. Therefore, you wouldn't know what the condition of the machinery was prior to May 6th?

A. Oh, yes, I am very familiar—

Q. How would you?

A. —with the machines. I can tell you almost anything on the machine.

Q. What is that?

A. I can tell you almost any part of the machine. I am very familiar with it.

Q. I am sorry, I didn't want to interrupt you, but you didn't see any of the machinery, didn't go through any of the machinery prior to May 6th?

A. Every day I go through the mill, all over the mill. I do travel from the top to the bottom every hour of the day.

Q. But you don't take care of any of the knitting machinery?

A. Only the drive of the machinery. If there is anything wrong on it, then I had my men go on that.

Q. Would you know in general what the condition of the machinery was; I mean, not with respect to its being broken or not, but there was some of the machinery that was either obsolescent or obsolete, isn't that right?

A. Not any in there.

Q. You have no machinery in the Apex Hosiery Company that is—

A. Absolutely not, that is all first-class machinery in there.

Q. You have no machinery there that has been depreciated once before?

A. Oh, machinery depreciates if it is there any length of time.

Q. Don't misunderstand what I mean. When I say "depreciated", I don't mean "depreciate". What I mean is this, you have some of the machinery that has been paid for over and over again, isn't that right?

A. Well, that there,—

MR. HIRSCH:
Objected to.

A. —I couldn't tell you that.

BY MR. SYME:

Q. Oh, you don't know.

A. Not if it is paid for over and over again, because I don't keep production there, I couldn't say whether the machine paid for itself or not.

Q. Would you know whether any of the machinery is antiquated,—

A. Well,—

Q. —and has to be replaced by new machinery?

A. I would—I would know according to the sinkers, if it was making lines, or something like that, that they naturally needed new sinkers, dividers, or there would be some cause on that, but those machines are all taken care of on that, they are changed all the time.

Q. Isn't it a matter of fact that some of the machinery that was there had to be rebuilt entirely so that it might be useful?

A. It is at all times, we go over our machinery that way.

Q. Not repaired, but rebuilt.

A. Not rebuilt, there is none of it being rebuilt. They re-sinker them and re-needle them, and things like that at all times. They don't let the machinery go down in that plant.

THE COURT:

I am wondering, Mr. Syme, whether this cross examination would not be properly addressed to a witness who testifies as to the values. This witness has not mentioned dollars and cents at all. He has just testified to certain physical injuries that he saw which you or I, probably, could testify to just as well. I believe that you will have to go over all that you are doing now, all this cross examination will have to be gone over with a witness who testifies as to dollars and cents damages.

MR. SYME:

Well, if Your Honor feels that it is not pertinent at this time that is perfectly all right.

THE COURT:

I don't believe it is. I don't believe it helps. I don't believe it helps us at all at this point.

BY MR. SYME:

Q. When did you say you were taken out of the plant into the back yard and you heard these noises?

A. That is the—that is the day before they were evicted, I believe it was the 22nd, if I am not mistaken. They were evicted on the 23rd, I think.

Q. It was the 22nd, you say?

A. I believe it was, yes.

Q. At what time?

A. Well, we went out there about nine o'clock in the morning, I judge, we were put out there at nine o'clock, herded out into the yard, all of us, watchmen, anybody that I had in the place, in the inner yard, that we couldn't get out to the street, only by having a ladder to go over the top of a one-story building there, over the back fence.

Q. Then you are pretty certain that this happened on June 22nd at nine A. M., is that right?

A. It happened from that time right straight through.

Q. Yes, but I mean at nine A. M.—

A. Until we got out.

Q. At nine A. M. you were herded into the back yard?

A. Well, it was approximately that time.

Q. Yes, I mean nine or nine-fifteen.

A. I will tell you why I am sure of it. We were out in the yard about two hours and I asked them if there wasn't any chance of my sending one of the men out to get some lunch for us, and they said, "Absolutely no, we will give you lunch in here", and, of course,—

Q. That was about eleven A. M., you would say?

A. Yes, that was around eleven, half past eleven, I guess.

Q. So that you would say at nine A. M. you were herded into the back yard on June 22nd?

A. Well, approximately around that time.

Q. All right, I am not holding you,—

A. Yes.

Q. —it is around nine, nine-fifteen, nine-twenty, that is all right.

A. Yes, that is right.

Q. At that time you say you and the others were herded into the yard?

A. That is right.

Q. And you heard this noise?

A. That is right.

Q. You are positive it was that time?

A. From that time, on.

Q. On, that is right?

A. To the time we got out of the building that night. We got out approximately half past six that night, had to get permission from an outsider to get out—

Q. Wait a minute,—

A. —through that gate—

Q. Wait a minute,—

A. —on Rising Sun—

Q. —you have testified to that. I am trying to fix the time that you heard this noise.

A. It run from nine or nine-thirty in the morning on right straight through until I got out.

Q. From nine-thirty in the morning until six in the evening, is that right?

A. Yes, that is right, whatever time it was we got out.

Q. You heard these noises going on all day?

A. Yes, all different noises. Now, understand, it wasn't just rumble all the time, there would be like an intermission in it, and then again it happened.

Q. You have testified to the fact that Bill Etter fingerprinted you?

A. Yes.

Q. Is that right?

A. That is right, he fingerprinted all of us.

Q. You don't know that Bill Etter fingerprinted

all of the sit-downers and had that given to the police department, do you?

A. He—just a minute—he didn't fingerprint all the sit-downers, either, he only fingerprinted until we come up, and he says, "Come on, fellows, that is what we want", and out he goes.

Q. Well, I say, you don't know whether he did fingerprint—

A. He—

Q. —and give it to the police department?

A. He did fingerprint a few of them.

Q. And—

A. I don't know what he done with them.

Q. I see.

A. Whether he gave them to you or who he gave them to, but as soon as we were fingerprinted that was the end of it, that is all he wanted.

MR. SYME:

That is all.

MR. HIRSCH:

That is all.

MR. HIRSCH:

If Your Honor please, I am prepared from this point on to go into the question of figures on damages, and so forth, and if Your Honor will indulge me it may be necessary in order to get a continuous story to put a witness on the stand and then take him off,—

THE COURT:

Yes.

MR. HIRSCH:

—and then put him back on.

THE COURT:

That is all right. Now, I assume that your proof will consist of the cost of repairs to—that is, part of your proof will consist of the cost of repairs to each of these individual machines, is that so?

MR. HIRSCH:

Well, that will be part of it, and then also the cost of repairs to the property itself.

THE COURT:

Yes. Well, now, I am wondering if it is necessary to take that up item by item, whether we can't properly take these machines as one unit, and have your witness testify as to cost of repairing of these machines, but have all the data present in court as to the condition and cost of each individual machine, and then permit as full a cross examination as counsel wants to engage in, because it doesn't seem to me it is necessary—it will take us all day and more to go over each one of these individual machines and discuss the number of needles—

MR. HIRSCH:

Well, I had anticipated that, sir,—

THE COURT:

—injured—

MR. HIRSCH:

—and I have asked the representatives of the machine company, the Reading Textile Machine Works, to be here at twelve o'clock.

THE COURT:

Yes.

MR. HIRSCH:

And they will bring with them all of their records showing every bit of labor and material that went into every machine, and they will be available to the defendants.

THE COURT:

Yes, I think it will be all right if you treat the repairs to machines, for example, as one unit, and—

MR. HIRSCH:

And I am likewise prepared to do that with the other items of damage. In fact,—

THE COURT:

All right.

MR. HIRSCH:

—in the statement of claim I have broken down the items of damage, and we have here in court all of the bills—isn't that right, Mr. Steeple? —all of the bills and invoices and checks for every item.

THE COURT:

Well, all right, you go ahead and we will see how we work it out. I wouldn't start in, however, machine by machine, because there are a couple of a hundred of them.

MR. HIRSCH:

Well, I think we can expedite it under that plan, Judge Kirkpatrick, but I may have to ask your indulgence, sir, in putting them on and off the stand,—

THE COURT:

Oh, yes.

MR. HIRSCH:

—certain people.

THE COURT:

That is all right. We will meet that as well as we can.

MR. HIRSCH:

Mr. Steeple.

MR. SIMONS:

May I just state this, Your Honor, I have been thinking about the matter of the approach to that. Of course, we would want to have some opportunity to go over all those bills.

MR. HIRSCH:

They have all been gone over by your accountant previous to trial.

MR. SIMONS:

As I have explained, our check has been limited to the question of whether or not you have such bills and have such checks and made such payments.

THE COURT:

Oh, yes, we will have to meet that as it arises. I do not want to deprive you of any rights in connection with testing the accuracy of testimony that is given here, and I will see that you get full privilege to do everything that is reasonable along that line.

MR. HIRSCH:

They may have full access to everything we have.

THE COURT:

Yes.

MILTON S. STEEPLE, having been duly sworn, was examined and testified as follows:

Direct Examination

BY MR. HIRSCH:

Q. Mr. Steeple, what is your position with the Apex Hosiery Company?

A. General office manager.

Q. And for how many years have you been with the company?

A. Twenty-two years.

Q. And are all the books and records of the company kept under your supervision?

A. They are.

Q. Without reference to what occurred on May 6th, you were on the premises, and heard testimony of other witnesses, and your recollection is similar?

A. I did.

Q. Now, direct your attention merely to the question of repair of damage to plant and equipment. Who repaired the damaged knitting machinery?

A. Reading Textile Machine Works.

Q. Now, in addition to the machine damage there was other damage as described by Mr. Harper and as described by other witnesses which had to be repaired, is that correct?

A. That is correct.

Q. What method or system did you set up in your office so that you might be able to have an accurate and complete record of all damage to the plant and machinery and equipment, and the nature of the repairs and cost of the repairs?

A. I deemed it advisable to set up a separate set of books and a separate checking account.

Q. In other words, you set up a separate—

A. Separate set of books.

Q. —organization of information, so to speak, in which you put all this information of damage?

A. Yes.

Q. And the cost of repairing?

A. That is correct.

Q. And you ran your own bank account to pay for that?

A. That is true.

Q. And are your records full and complete on this item of damage?

A. They are.

Q. On these items of damage. Now, in addition to those books have you kept in your possession all of the invoices which you received for the doing of the repairs, and all of the cancelled checks which you issued in payment of those repairs, together with all other information and data pertaining to this damage?

A. I have, and they are in the court here.

Q. And did you at my request separate all of the items of repair exclusive of damage to the machinery, which will be testified to by the Reading Machine Company, into folders corresponding to the items of damage for which claim has been made in this case?

A. I did.

Q. Now, at the time these books were set up did your company have an outside certified public accountant?

A. They did.

Q. And what was the name of that accountant firm?

A. Mathieson, Aitken and Company.

Q. Mathieson, Aitken—

A. Aitken.

Q. —Company, and who was the representative of that company who was most active in connection with the auditing of your books?

A. Mr. Langer, L-a-n-g-e-r.

Q. He is in court?

A. He is.

Q. And for how many years had they audited your books?

A. I would say approximately ten or twelve years, at least.

Q. And they were your regular accountants at the time of this damage?

A. They were.

Q. What, if anything, did Mr. Langer do with regard to the damage? Just tell us generally, I don't want you to—I will prove it through him.

A. Mr. Langer when we first got possession of the plant was directed to go in there and make an itemized list of all damages, which he did.

Q. Is this the itemization that was prepared by Mathieson, Aitken Company of the loss and damage to plant, machinery, equipment and personal property during the sit-down strike?

MR. HIRSCH:

I will show it to you in a minute. I am not going to offer it, I just want to have him identify it.

BY MR. HIRSCH:

Q. That was a general survey, so to speak, wasn't it?

A. It was a complete survey.

Q. And did Mr. Langer—how often was he in touch with you during the time that these books and records were being maintained?

A. He collaborated on them continually.

(The report was shown to counsel for defendants.)

MR. SIMONS:

May we see you a minute?

MR. HIRSCH:

I wouldn't do it at the moment. I will withhold it.

MR. SIMONS:

Come on up.

MR. HIRSCH:

All right.

(Discussion at side bar.)

BY MR. HIRSCH:

Q. Now, Mr. Steeple, claim has been made in this action for the damages sustained by the company in having to replace broken windows. Are all of the records which you have here in court relating to, and do they only pertain to the damage done on or after May 6th?

A. That is correct.

Q. And in all of your answers and in your production of any documentary evidence you understand that you are to exclude any repairs that were made by reason of ordinary wear and tear, or any repairs that were made by reason of anything that may have existed prior to May 6th, and you have done that—

A. I have done that.

Q. —in the preparation of these documents? Now, will you produce all of your records—by that, I mean your original records, invoices, and payments, check—covering the glazing of windows?

A. Yes.

Q. And tell us the amount of those payments, and just to complete my preliminary examination, I am referring to damage done between May 6th and June 23rd, 1937, is that correct, the date that the sit-downers evacuated.

THE COURT:

Yes.

THE WITNESS:

You mean—

BY MR. HIRSCH:

Q. When I refer to damage I am talking of damage done during the pendency of the sit-down strike.

A. One hundred and twenty-one thousand, nine hundred—

BY THE COURT:

Q. How much?

A. One hundred and twenty-one thousand.

BY MR. HIRSCH:

Q. For glazing windows?

BY THE COURT:

Q. What?

A. Just for glazing windows? Oh, I thought you wanted the entire amount.

Q. Well, let's have the entire amount.

MR. HIRSCH:

All right, exclusive of machine damage.

A. I might state that these figures agree with the items in the claim, individual items in the claim.

BY MR. HIRSCH:

Q. In other words, you have set up all of your original memoranda in a manner that coincides with the items in the claim?

A. In the proper order that they are listed in the claim, also.

Q. Now, give us the total exclusive of machine damage.

THE COURT:

Where is the claim? I haven't got the claim, have I?

MR. HIRSCH:

Statement of claim.

THE COURT:

Is it the statement of claim? Well, all right.

MR. HIRSCH:

Strike that question.

BY MR. HIRSCH:

Q. Give us the total including the machine damage, and then excluding it, and then we will break it down.

THE COURT:

All right.

A. $121,957.47.

BY THE COURT:

Q. Does that include machine damage?

A. It does.

BY MR. HIRSCH:

Q. That represents the amount of money your company actually paid for the repair of physical damage to the plant, machinery and equipment?

A. That is correct.

Q. Does that include damaged hosiery?

A. That does.

Q. It does?

MR. SIMONS:

Of course, that is subject to our objection, if Your Honor please, as a general statement.

THE COURT:

Yes, well, that is all right, surely.

BY MR. HIRSCH:

Q. Does that figure in any way include loss of profits or the other items for which claim is made?

A. No items excepting the actual bills, which we have here for the physical damage.

Q. And has every bit of that, or was all of that figured, the entire amount, actually paid out by your company in the repair of that damage?

A. It was.

Q. Are you including any figures which constitute merely appraisals of the damage which you never had repaired?

A. No.

Q. In other words, the figure which you have given us relates solely to damage which was actually repaired, and solely to damage found on the prem-

ises between—or, which happened on the premises between May 6th, 1937 and June 23, 1937.

A. That is correct.

Q. Now, then, will you break down that figure and tell us how much of that figure represents the amount of money paid by you to the Reading Textile Machine Works for its work on the machines?

MR. SIMONS:

Of course, our objection goes to that line as well.

MR. HIRSCH:

We will follow that up with the people from Reading, who I understand have just arrived.

THE WITNESS:

I have to consult with the item of claim there.

THE COURT:

Yes, it is all here. Then I won't have to make a memorandum.

THE WITNESS:

Yes.

BY THE COURT:

Q. And you are testifying exactly as in the item of claim?

A. Absolutely.

BY MR. HIRSCH:

Q. Now, just as a matter of expedition, just for this general information, haven't you got a machine rebuilding account showing the Reading end of the work?

A. I can get it from here.

Q. I have a copy somewhere. I can't find it.

Here it is. Will this help you? Do you have something like this? Well, will you use this?

MR. HIRSCH:

With your permission, Mr. Syme, may I use this for the moment?

(A paper was shown to the witness.)

THE COURT:

All you want is the total figure—

MR. HIRSCH:

That is all.

THE COURT:

—to subtract.

MR. SIMONS:

It is all taken subject to the objection.

MR. HIRSCH:

Yes, certainly.

BY MR. HIRSCH:

Q. Look at this and give us the total figure, please, covering the Reading work, or the work that was done by the Reading Textile Machine Company.

A. $67,776.15—or 16, that is, I guess.

Q. Now, that figure is part of the $121,957.47 which you referred to?

A. That is correct.

Q. And that leaves $54,181.32 of damage?

THE COURT:

Let's call that plant damage to distinguish it from machine damage.

MR. HIRSCH:

Well, that wouldn't be completely accurate, sir, because in that figure we will show that we did some repairs to the machinery which was not damaged but which had been permitted to remain idle and corrode and rust. We did that with our own—

THE COURT:

Still, call it plant damage,—

MR. HIRSCH:

All right.

THE COURT:

—and that means all the damage exclusive of the repairs to the machines made by the Reading Textile Machine Works.

MR. HIRSCH:

All right, and the plant damage was $54,181.32.

BY MR. HIRSCH:

Q. Now, will you break that item down according to the envelopes which you have there, which as I understand contain invoices and other original information?

A. That is correct.

Q. Now, will you give us that information?

MR. SIMONS:

Of course, if Your Honor please, our objection goes to this. Now, he is getting into some of the details, and I feel that we are being charged with lump sum payments. There is no evidence as yet, unless Mr. Hirsch intends to

follow it up, as to whether or not all of the repairs set forth there were necessary as a result of the claim, whether or not they were the fair, reasonable charges for all of that.

THE COURT:

Oh, well, I assume it will be followed up with all that. Of course, it must be.

MR. SIMONS:

Your Honor will take that, then, subject to my objection?

THE COURT:

Certainly.

THE WITNESS:

Do you want me to answer as to each item?

THE COURT:

Just take it from your statement of claim.

THE WITNESS:

Yes.

THE COURT:

Begin right down the line there.

THE WITNESS:

Glazing of windows, $830.08.

BY MR. HIRSCH:

Q. Now, just before you get down as to each item, you have an envelope there with the supporting data for that?

A. Each one of those.

Q. Go ahead.

A. Each one of these I read, we have the invoices here to support.

Q. Go ahead.

A.	Plumbing repairs and supplies	$ 359.10
	Hardware repairs and supplies	659.01
	Electrical Repairs and supplies	776.73
	Painting	98.06
	New front door	274.00
	Repairs to time recording system	895.00
	Repairs and replacement of fixtures	3,500.00
	Replacement of broken tubes for vapor lights; that is the lighting system	1,460.70
	Repairs and replacements to stencil machine	269.25
	Repairs to multigraph equipment	106.71
	Repairs to label pasting machines	180.00
	Repairs and replacement of sealing machine	119.35
	Miscellaneous repairs and replacements of mill furniture and equipment	668.19
	Repairs to desks, typewriters, adding machines, et cetera	1,561.76
	Labor costs for repairing other damaged office equipment	1,000.00
	Repairs to and replacement of Venetian Blinds in office and plant	1,066.00
	Repairs and miscellaneous replacement to office equipment	40.94
	Miscellaneous repairs in office and plant	1,130.92
	The item of additional miscellaneous damage	1,508.08
	Machinery (other than knitting machines)	527.15
	Miscellaneous labor repairing damage	360.00

Repairs to fence	37.50
Inventory shortage	2,593.50
Damaged hosiery	1,229.59
Labor costs for sorting wareroom merchandise	623.99
Silk and yarn waste on damaged machines	731.93
Stolen mill supplies, including 6000 45 gauge Reading split dividers, 19 mending hooks, and miscellaneous supplies	2,098.29

Q. Now, while we are on that point, were all of the items which you read items of repairs by reason of damage caused to the various equipment that you related or detailed after May 6th and during the period of the sit-down?

A. That is correct.

Q. And in so far as the inventory shortage and damaged hosiery was concerned, was that what you found after you resumed possession of the premises,—

A. That is correct.

Q. —as having occurred during the period of the sit-down?

A. That is what we found to be missing.

BY THE COURT:

Q. Well, let me ask you one thing, you say "After May 6th." Have you excluded damages that took place on the 6th of May? Is that included?

A. That is included.

BY MR. HIRSCH:

Q. I mean—I was wrong—on and after.

A. From the time the plant was broken into.

THE COURT:

All right.

MR. SIMONS:

May I enter my objection to that at this time also, if Your Honor please, so the record will show that the question may be of money that they may have spent, but not necessarily of damage that was done?

THE COURT:

Well, it is understood that your testimony is the money spent,—

THE WITNESS:

Absolutely.

THE COURT:

—and, of course, it will have to be shown later on that that is reasonable and proper cost of repairs, but all you are testifying—

BY THE COURT:

Q. When you use the word "damage" you simply mean—

A. General.

Q. —the money you spent for repairs?

A. Absolutely.

THE COURT:

All right.

BY MR. HIRSCH:

Q. Now, while we are on that point, Mr. Steeple, was any of this damage caused prior to May 6th?

A. No.

Q. And were any of the sums paid out by your

company for any reason other than the fact that they were necessary in the repair of damage done on or after May 6th?

MR. SIMONS:

I object to that, if Your Honor please. I think we understand quite well just what Mr. Steeple has testified to.

THE COURT:

I think so, too.

MR. SIMONS:

And I don't think Mr. Hirsch should try to get anything on the record to indicate it is other than moneys that they claim that they spent.

THE COURT:

That is what it is.

THE WITNESS:

I haven't read all the items of damage yet.

BY MR. HIRSCH:

Q. Well, go ahead. You may proceed further.

A. Repairs to roof $47.60

MR. SIMONS:

Just one second, also, and I think Mr. Hirsch will agree, with the items as to the merchandise that Mr. Steeple has just read; that is also an estimate as prepared by him as to what he—what their records show to be the value of that, without proof or accepting it as proof that it was worth that much.

THE COURT:

Well,—

THE WITNESS:

Which items do you have reference to?

THE COURT:

—do you mean the missing merchandise?

MR. SIMONS:

The missing merchandise.

BY MR. HIRSCH:

Q. All right, where did you get the figures which you have as to value?

A. Had to use an average price, because we couldn't establish exactly everything that was gone.

Q. You used an average price? What do you mean by, you couldn't establish everything that was gone?

A. We could establish—

Q. Talk so the jury can hear you.

A. We could establish it in bulk from the inventory which we took after we gained possession of the plant.

Q. Well, you knew how much you had on May 6th?

A. That is right.

Q. You knew how much you found on the 23rd?

A. That would be the difference.

Q. Then you took for that an average price—

A. Yes.

Q. —during that period?

A. That is correct.

Q. And that is the way you got that figure? All right.

MR. SIMONS:

If Your Honor please, I don't know whether they intend to go into that particular question on the loss, but I object to it if it is a matter that he is merely stating or he is guessing as to what it is worth. If you are merely accepting it now as a general statement to sort of present the entire matter, and then go into details; I can understand it, but if that is going to be presented as the sole testimony on that score I object to it at this time,—

THE COURT:

I don't—

MR. SIMONS:

—in addition to my general objection.

THE COURT:

I don't grasp your idea, Mr. Simons.

MR. SIMONS:

Well, he has made a statement here that certain merchandise was missing, certain he assumed was stolen, and a certain amount of waste, and he has given us a figure, a dollars and cents figure for that.

THE COURT:

Yes, and he tells you how he got that.

MR. SIMONS:

Well, now, if that is evidence he will have to show us his records for his inventory at the beginning of that period on May 6th.

THE COURT:

Oh, yes,—

BY THE COURT:

Q. You have that available?

A. I might add—

Q. You have that available?

MR. HIRSCH:

Answer the Judge, first.

THE WITNESS:

I might add there would be a strong possibility we would have been able to establish—

BY THE COURT:

Q. Oh, well, why don't you tell me what I want to know? Have you got your inventory here as of May 6th?

A. As of April 30th and July 31st, when—

Q. And are you able to bring those inventories to May 6th and June 23rd?

A. I could if that was necessary. We have established the stock. We didn't operate from May 6th until the physical inventory was taken on July 31st.

Q. All right.

A. The stock should have been correct as to the reports as of that date.

THE COURT:

All right.

MR. SIMONS:

If Your Honor please, I then object to that testimony and ask that it be stricken from the record until such time as Mr. Steeple is able to produce or obtain testimony for such damage as he claims.

MR. HIRSCH:

He is perfectly competent, if Your Honor please, to testify. He has the records before him.

BY MR. HIRSCH:

Q. The inventory of July 31st was taken under your supervision?

A. July 31st, correct.

THE COURT:

Yes, I know, but you haven't covered so far the period from April 30th to May 6th.

MR. HIRSCH:

I will cover that now, then.

THE COURT:

All right, that is what I want to know.

BY MR. HIRSCH:

Q. Now, how did you determine the inventory which you had on May 6th, 1937, and the amount of missing merchandise from that inventory as you found it to be on July 31st, 1937? Will you—

A. We keep perpetual inventory records.

Q. Well, now, then—

A. And then an actual physical inventory was taken on July 31st.

Q. And how did you use that figure, how did you work on back?

A. Well, the figure, the perpetual inventory figure should have shown—or, did show what we should have had on hand.

Q. On what date?

A. On July 31st.

Q. And the actual inventory showed—

A. That showed three hundred and ninety-nine dozen difference—

THE COURT:

That is all right.

BY MR. HIRSCH:

Q. In other words,—

THE COURT:

Well, I understand that, and I guess the jury does.

BY THE COURT:

Q. You took the physical inventory, we will say, on April 30th, and from it you added or subtracted what came in and what went out?

A. No, Judge, there wasn't a physical inventory taken on May 1st. That was from our perpetual records.

Q. You did take a physical inventory—

A. December 31st.

Q. —December 31st, and then after that time you simply added on every day what you—

A. Produced.

Q. —produced, and took off what you shipped out?

A. That is right?

Q. And kept it up every day, and took another physical inventory on the 31st of July?

A. Yes, our regular course of keeping our inventory records.

THE COURT:

That is all right. Now, the only thing you

haven't covered is the question of how much damage was done, how much loss there was on the 6th of May, before the plant came into the exclusive control of the sit-down strikers. I think maybe that counsel will contend that the defendants are responsible for that damage as well. On the other hand, it may be that where it cannot be shown that any member of the union or any defendant participated in the damage on the 6th of May, we might have to have the figure for that, I don't know.

MR. HIRSCH:

We have a figure, I think, for that.

BY MR. HIRSCH:

Q. Haven't we, Mr. Steeple?

A. I didn't get that.

Q. A figure covering the damage done on May 6th, 1937, as distinguished from the subsequent damage have you broken that down in that way?

A. No.

THE COURT:

Well, I don't say that it is necessary.

MR. SIMONS:

If Your Honor please, do I understand that you are passing over, then, the question of that merchandise shortage and merchandise that is missing?

THE COURT:

Yes, why not?

MR. SIMONS:

Well, may I enter my objection for a number

of reasons? First of all, we have no proof at this time, that is, we have no actual evidence of any figures as to the inventory.

THE COURT:
Yes, well—

THE WITNESS:
I have an inventory here.

THE COURT:
He has it available here.

MR. HIRSCH:
We have it.

MR. SIMONS:
Wait a second, do I understand he will supplement his present testimony with the actual figures and the records?

THE WITNESS:
Yes.

THE COURT:
He will if you desire it.

MR. SIMONS:
Well, I do desire it.

THE COURT:
All right.

MR. SIMONS:
This is taken subject to my objection, and the fact that he will produce it at a subsequent time.

THE COURT:
Yes, surely. It is here, and all you have to

do is ask him for it in cross examination. If it is not produced I will strike out the testimony. Of course, it must be here. As I say, the only thing that has not been covered, the only hole that has not been stopped up, is the question of damage done actually on the 6th of May.

MR. SIMONS:

And of course, Your Honor, I will ask that that be segregated,—

THE COURT:

Well,—

MR. SIMONS:

—because there is a very definite question—

THE COURT:

—I am reserving that.

MR. SIMONS:

—as to what happened.

THE COURT:

As I say, I am reserving that.

MR. SIMONS:

Yes.

THE COURT:

And it may be that that will be necessary in order to establish damages with accuracy.

Well, I think we can recess at this point until two o'clock.

(Recess, 12:30 until 2:00 o'clock P. M.)

END OF VOLUME I

Vol. II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1939

No. 638

APEX HOSIERY COMPANY, PETITIONER,

vs.

WILLIAM LEADER AND AMERICAN FEDERATION OF FULL FASHIONED HOSIERY WORKERS, PHILADELPHIA, BRANCH No. 1, LOCAL No. 706

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED JANUARY 12, 1940.

CERTIORARI GRANTED FEBRUARY 26, 1940.

INDEX

Volume I

	PAGE
Docket Entries	2
Plaintiff's Second Amended Complaint (Filed Sept. 19, 1938)	8
Affidavit of Defense of William Leader (Filed Oct. 27, 1938)	23
Affidavit of Defense of American Federation of Full Fashioned Hosiery Workers, Philadelphia Branch, No. 1, Local No. 706 (Filed Oct. 27, 1938)	36
Testimony (Filed April 18, 1939)	51

Plaintiff's Evidence

(Hearing Held March 13, 1939)

	DI.	CR.	RE-D.	RE-C.
Ulysses G. Brown Called on Cross Examination				68
Jack L. Milestone	78	82	84	86
Fritz Wienhold	88	91		
Joseph Friedland	93	95	97	
William Meyer	100	160	176	

(Hearing Held March 14, 1939)

	DI.	CR.	RE-D.	RE-C.
Kathryn Bradley	177			
Mildred Elsner	189	196		
Paul Bergmeister	197	200	201	
William Goble	202	203		
Marguerite Rupp	211	217		
Helen Dorwart	220	230		
Earl Stout	239			
F. Elwood Struve	247	277		
John Hartung	295	299		
Joseph Smith	303	308		
Herbert Hahn	311			
Frederick W. Koelle	318			
Leo O'Driscoll Called on Cross Examination			327,	355
Harry Oehmig Sworn				355
Harry Oehmig Called on Cross Examination				357

(Hearing Held March 15, 1939)

Harry Oehmig Called on Cross Examination				365
Joseph Patrick Burge Called on Cross Examination				402
J. Allen Harper	405	462		
Milton S. Steeple	472			

Volume II

(Hearing Held March 15, 1939 Cont.)

J. Allen Harper			496	
Milton S. Steeple	499	547		

(Hearing Held March 16, 1939)

	DI.	CR.	RE-D.	RE-C.
Milton S. Steeple			585	587
William Leader Called on Cross Examination				607
Sylvan Hirsch	618	622		

DEFENDANTS' EVIDENCE

William Leader	629	666		

(Hearing Held March 17, 1939)

William Leader		694		
Myles Higgins	738	746	753	754
William F. Etter	755	783	811	818
Edwin Morris	820	823	824	
Frederick S. Weber	824	825	826	828
			829	830
Richard Doyle	830			

(Hearing Held March 20, 1939)

William Meyer Called on Cross Examination	842

PLAINTIFF'S EVIDENCE IN REBUTTAL

Ulysses G. Brown Called on Cross Examination				849
Mildred Kelly	876	884		
J. Allen Harper	886			
William Meyer	889	891	892	

DEFENDANTS' EVIDENCE SURREBUTTAL

	DI.	CR.	RE-D.	RE-C.
Elsie Rau	894	904		

(Hearing Held March 21, 1939)

(Hearing Held March 29, 1939)

PLAINTIFF'S EVIDENCE (Continued)

Earl Constantine	924			
Joseph C. Langer	928	930		
	940	969		
	970	978		

Volume III

(Hearing Held March 29, 1939 Cont.)

Joseph C. Langer		1018		

(Hearing Held March 30, 1939)

Joseph C. Langer	1129	1114		
	1133	1131		
	1138	1135		
	1149	1144		
		1163		
Milton S. Steeple			1151	1152
William Meyer	1181		1145	1147

PLAINTIFF'S EVIDENCE IN REBUTTAL (Continued)

William Meyer	1203	1209	1242	1245
Milton S. Steeple			1270	1274
Joseph C. Langer			1270	

	DI.	CR.	RE-D.	RE-C.
F. Elwood Struve			1265	
(Hearing Held March 31, 1939)				
PLAINTIFF'S EVIDENCE (Continued)				
Milton S. Steeple			1282	1285
			1296	1298
			1300	
Motion for Directed Verdict for Defendants				1305
(Hearing Held April 3, 1939)				
Charge of the Court				1312
Motion for Directed Verdict for Defendants				1348
Defendants' Points for Charge				1350
Plaintiff's Calculation of Losses for which Claim Is Made in this Suit				1358
Verdict				1367
Judgment				1368
Motion To Set Aside Verdict and Judgment Against William Leader and American Federation of Hosiery Workers, Branch No. 1, Local 706				1369
Motion and Reasons for New Trial				1370
Opinion Sur Motion To Set Aside the Verdict and Judgment and Motion for New Trial				1389
Order Dismissing Motions To Set Aside the Verdict and Judgment and To Grant a New Trial				1392
Notice of Appeal				1393
Designation of Matter To Be Included in Record on Appeal				1395
Certificate of Clerk				1397

Exhibits

	PAGE
Exhibit P-1, Copy of letter dated March 4, 1937, from William Leader, President, Full Fashioned Hosiery Workers Local 706, Branch No. 1, to the Brooks and Anderson Hosiery Company	120
Exhibit P-2, Photograph (Physical Exhibit)	131
Exhibit P-3, Photograph (Physical Exhibit)	132
Exhibit P-4, Photograph (Physical Exhibit)	132
Exhibit P-5, Photograph (Physical Exhibit)	132
Exhibit P-6, Photograph (Physical Exhibit)	134
Exhibit P-7, Photograph (Physical Exhibit)	136
Exhibit P-8, Photograph (Physical Exhibit)	215
Exhibit P-9, Card entitled "Pledge Card, American Federation of Hosiery Workers, Branch No. 1"	229
Exhibit P-10-a to P-10-u, Photostatic copies of vouchers of the Full Fashioned Hosiery Workers Union of Philadelphia and Vicinity	339-354
Exhibit P-11-a to P-11-q, Copies of The Hosiery Worker	373-400
Exhibit P-12, Summary of damage to leggers and footers on June 19th, 1937, compiled by Mr. Harper	422
Exhibit P-13, Handwritten memoranda of Mr. Harper relating to damages found on various dates during the sit-down strike	442
Exhibit P-14, Photostatic copies of memoranda made by Mr. Harper relating to damages noted to machines on June 23rd, 1937	445

PAGE

Exhibit P-15, Box containing blackjacks, brass knuckles, pipes, etc. (Physical Exhibit) 459

Exhibit P-18, Depositions of Thomas Flynn, Harry Bach, Paul Walton, John Bernhardt, Herbert S. Fahy, Raymond Hallstein, Louis Kenworthy, Peter Kremer, David E. Justice, Herman Freiheit, Edward Kozubel, Carl Kuebler, Paul Lang, Harry Edward Jones, Sesto Lucarini, William Anderson, Martin Pirozek, Howard Carpenter, Francis McDermott, Ernest Del Prete, Alfred Schuch, Louis Drigert, Jake Schulberger, Raymond Evans, Elmer Miller, John Ezzo, William Pawlick, George Flynn, Robert Pawlowski, George Hober, Valentine Razler, Milton Innitski, Walter Razler, Joseph Ryan and William Etter (Physical Exhibit) 606

Exhibit P-19, Circular entitled "Attention—Hosiery Workers", signed by William M. Leader, president 693, 856

Exhibit P-20, Photostatic copy of bill dated May 7th, 1937, from Weil's Curiosity Shop to Full Fashioned Hosiery Workers Union, Philadelphia, Pa. 694, 872

Exhibit P-22, Excerpt from minutes of the regular membership meeting of Branch 1 of September 11, 1937 (Physical Exhibit) 704, 1308

Exhibit P-23, Letter dated May 21, 1937, on the letterhead of the Full Fashioned Hosiery Workers Union of Philadelphia and vicinity 715

Exhibit P-24, Letter dated June 24, 1937, on the letterhead of the Full Fashioned Ho-

PAGE

siery Workers Union of Philadelphia and Vicinity 716, 881

Exhibit P-25, Postal card dated May 21, 1937, from William Leader, addressed to William Meyer, Jr. 820, 883

Exhibit P-26, Letter dated July 29, 1937, from American Federation of Hosiery Workers, Branch No. 1, Local No. 706, to Apex Hosiery Company 875

Exhibit P-27, Report of the Master dated March 28, 1938 921

Exhibit P-28, Statement entitled "Shipments of Women's Full-Fashioned Hosiery 1934-1938 inclusive" prepared by Statistical Department, National Association of Hosiery Manufacturers, Inc. 1261

Exhibit P-29, List of Orders Received August 1, to December 31, 1937 1281

Exhibit D-1, Shop Rules of the Apex Hosiery Co. 279

Exhibit D-9, Letter dated June 28, 1937, from William Leader, President, "Attention All Shop Chairman" 896, 899

Exhibit D-10, Chart on page 18 of brief on behalf of the Full Fashioned Hosiery Manufacturers of America Inc., in a proceeding before a Wage Rate Tribunal in the matter of Full-Fashioned Hosiery Manufacturers of America, Inc., and American Federation of Full-Fashioned Hosiery Workers 1221, 1247

Exhibit D-11, Excerpt from the December 29, 1937, issue of the Special News Letter of the National Association of Hosiery Manufacturers 1264

	Original	Print
Proceedings in U. S. C. C. A., Third Circuit	1398	1398
Order of submission	1398	1398
Opinion, Biggs, J.	1399	1398
Judgment	1400	1414
Petition for rehearing (omitted in printing)	1401	1415
Order denying petition for rehearing	1402	1415
Clerk's certificates (omitted in printing)	1403	
Order allowing certiorari	1404	1416

VOLUME II

In The

DISTRICT COURT OF THE UNITED STATES

For the Eastern District of Pennsylvania

No. 19950. March Term, 1937.

APEX HOSIERY COMPANY

vs.

WILLIAM LEADER, President of American Federation of Full Fashioned Hosiery Workers (Sometimes known as American Federation of Hosiery Workers), Phila. Branch No. 1, Local No. 706, an unincorporated association, and individually, Joseph Burge, Vice President of said association, and indivdually, Harry Omeig, Treasurer of said association, and individually, Huey Brown, Secretary of said association, and individually, The American Federation of Full Fashioned Hosiery Workers, (sometimes known as American Federation of Hosiery Workers), Philadelphia Branch No. 1, Local No. 706, an unincorporated association, on behalf of itself and all the members thereof.

Sylvan H. Hirsch, Esq.,
Arno P. Mowitz, Esq.,
Harry G. Sundheim, Esq.,
For Plaintiff.

M. Herbert Syme, Esq.,
For Defendants.

After Recess

Present: Counsel as before noted

MR. HIRSCH:

If Your Honor please, I have to apologize for my witness. I asked him to stay after he was finished testifying and look over certain records, and then he had to go and eat some lunch, and he is not back. I told him to be sure to be here at two.

THE COURT:

All right, can we go ahead with something else, or is there anything else we can do?

MR. HIRSCH:

Yes, I will call—

THE COURT:

Maybe he is coming now. No, I guess not.

MR. HIRSCH:

Well, I will call one witness back, meanwhile. Mr. Harper.

J. ALLEN HARPER, recalled.

Redirect Examination

BY MR. HIRSCH:

Q. Mr. Harper, in addition to the testimony you gave this morning will you tell me whether or not you had any conversation with anyone of the sit-

downers in the Apex premises during the period of the sit-down strike, whose name and identity you know?

A. Yes, sir.

Q. First, tell us who it was.

A. Ray Hallstein.

Q. His name is Raymond Hallstein?

A. Raymond Hallstein.

Q. One of the sit-downers?

A. One of the sit-downers.

Q. And you had a conversation with him when?

A. Why, I had a conversation with him twice, once in the yard and once in the supervision office.

Q. What date with reference to June 23rd; I mean, how long before June 23rd?

A. Well, it was two different times. I [guess] just the first time was about three weeks before that.

Q. And when was the last time?

A. Oh, about a week afterwards, in the yard.

Q. And was that during the period when an appeal was pending in the Circuit Court?

A. It was.

Q. Now, will you tell us—but before you answer, in case there is an objection, don't give your answer until the Court has ruled—will you tell us what Mr. Hallstein said to you as it relates to anything on the Apex premises.

MR. SIMONS:

I object, if Your Honor please. I don't know that any conversation with Hallstein would in any way be attached to or attributed to any of the defendants in this particular case.

MR. HIRSCH:

I think, if Your Honor please, that every one of the sit-downers is an agent of the union, having been put there and supported by the union, they are the agents of the union to carry out this purpose, to-wit, to hold possession of the property, and such other motives and purposes as they may have had. I think it is relevant from that standpoint.

MR. SIMONS:

If Your Honor please, I don't believe that every person in the employ of any company or any organization is directly, or indirectly, even, an agent of that particular company or employer. I think it would be going pretty far afield to extend the theory of agency that far.

MR. HIRSCH?

Well, it relates to an act, the conversation will relate to an act which was subsequently done, and we are trying to tie it up to show by whom.

THE COURT:

Of course, I don't know exactly what the testimony is.

MR. HIRSCH:

May I tell you at side bar?

THE COURT:

I think you better tell me what the statement is.

(Discussion at side bar.)

THE COURT:

Well, I will sustain the objection.

MILTON S. STEEPLE, recalled.

Direct Examination (Continued)

BY MR. HIRSCH:

Q. Before we proceed further, Mr. Steeple, you answered Judge Kirkpatrick with reference to the inventory shortage by saying you took an average price for the number of dozens you found to be short. Can you tell us whether or not you had any records on your premises prior to May 6th, 1937, which if they had been retained on your premises, or if you had subsequently had them, would have enabled you to fix the actual and specific price of every dozen pair of stockings that were missing?

A. We could have.

Q. And what happened to those records?

A. Those records were destroyed or so disfigured that they couldn't be used, when they broke into the mill on May 6th, and we didn't have them. We could have established the exact price of each style, and thereby the price—

Q. So that the averaging which you did was necessitated by the fact that you no longer had the records—

A. Had the records.

Q. —which you previously had.

BY THE COURT:

Q. What do you mean, the selling price?

A. Yes, we could have established the style—

Q. No, but when you speak of average prices, you mean the selling price,—

A. That is correct,—

Q. —market price?

A. The selling price, based on the styles we were manufacturing.

Q. Is that based on the market?

A. That is the market, yes.

BY MR. HIRSCH:

Q. And you will between now and tomorrow endeavor to break down these items of damage so as to allocate the damage and the cost of repairing the damage which occurred on May 6th, as distinguished from the damage which subsequently occurred?

A. There is quite a few items in here that could be pointed out now that actually took place on May 6th; the glazing item, and so forth.

Q. Well, will you tell us which items they are, now, as to which you have already testified, which cover damage done on May 6th?

A. The glazing.

Q. And the amount—

A. Typewriter repairs.

Q. Well, now, just take the claim itself.

A. Multigraph.

THE COURT:

Let's itemize it.

MR. HIRSCH:

Note the appearance of Mr. Isadore Katz as counsel for the National Association of the American Federation of Hosiery Workers.

THE COURT:

Better let him enter his own appearance.

MR. SIMONS:

I ask that that be stricken.

MR. SYME:

He is perfectly capable of doing it himself.

MR. HIRSCH:

If he participates in the case I think the record should note his participation.

MR. KATZ:

Just a moment, if Your Honor please, I object to Mr. Hirsch entering an appearance for me on behalf of anybody.

THE COURT:

Yes.

MR. HIRSCH:

Well, I object to Mr. Katz appearing in the case unless he does.

MR. SYME:

Mr. Katz is co-counsel with me. Mr. Katz is a member of the bar.

THE COURT:

Suppose Mr. Katz states if he wants for whom he appears.

MR. KATZ:

May I state, Your Honor, I am merely here in an advisory capacity, at Mr. Syme's request.

THE COURT:

You are associated with Mr. Syme?

MR. SYME:

That is right.

THE COURT:

And so far as you represent anyone, you

represent the defendants in this record in an associate capacity?

MR. KATZ:
That is right.

THE COURT:
All right.

BY MR. HIRSCH:
Q. Now, will you give us the items, please?
A. The front door, new front door.
I cant' give you the major, the major part of the time recording, but not entirely, was May 6th.

BY THE COURT:
Q. Major part of the—
A. Time recording, time recording system.
Q. Have you got those in amounts? Have you got them segregated?
A. Yes, they are all segregated, but I will have to break some of the amounts up.

THE COURT:
All right, I will let you do that.

BY MR. HIRSCH:
Q. Can't you do that tomorrow?
A. Yes.

THE COURT:
Yes, do that, and then it may be a matter of some importance to determine how much of this damage you claim was done on the 6th of May.

BY MR. HIRSCH:

Q. Now, then, will you continue with the items of damage which the company had repaired and the amount of money spent in connection therewith, exclusive of the work done by the Reading Textile Machine Works?

A. I think we stopped in the middle there. I think the last item was repair to roof, is that correct?

Q. Mr. Steeple, may I ask a question, and if counsel will permit it, it is an inquiry question: Weren't these figures already broken down into the date of May 6th and subsequently, because I see now additional figures for time recording. I just want to bring that to your attention.

A. These are broken up, I think, from two periods, aren't they?

Q. Well, will you look at the other records there and tell me whether or not I am in error when I say that the items to which you have previously testified were things relating solely to damage on May 6th, and that you are now ready to testify to other items which occurred subsequent to that day, some of which are the same. Look at page 12 and look at pages 8, 9 and 10. Take your time, to make sure, before you answer. I think at my request you broke them up originally.

MR. HIRSCH:

If Your Honor please, just so you may understand, when this claim was prepared I asked that these items be broken down, and I would like now to re-examine the witness.

THE COURT:

All right, you go ahead.

BY MR. HIRSCH:

Q. Mr. Steeple, will you once again look at the claim and your items, and isn't it a fact that at my request you did break down the items of repair into those items covering repair of damage which occurred on May 6th, when the mob broke in, and those items which covered the repair of damage which occurred subsequent to May 6th, but during the pendency and continuation of the sit-down strike?

A. That is correct.

Q. And in the claim that has been filed we have several items that repeat themselves, such as the repair of time recording system, and so forth?

A. That is correct.

Q. Now, then, am I correct in saying that all of the items as to which you have testified previously, giving the name of the item and the amount, covered items of damage to, as Judge Kirkpatrick called it, plant damage occurring on May 6th?

THE COURT:

Occurring on—after May 6th?

MR. HIRSCH:

As to which he has testified as occurring on May 6th.

THE COURT:

Yes.

A. Yes.

BY MR. HIRSCH:

Q. And you have other break downs and figures available for the damage which occurred subsequently?

A. Subsequent to that. The only thing is, the roof item in there, which you have, I think I testified to that roof item.

THE COURT:

Well, you mean the fifty-four thousand dollars which you have testified to was all damaged on May 6th?

MR. HIRSCH:

No, sir.

THE COURT:

Well,—

MR. HIRSCH:

He has so far given the total figures—I will explain to you, if Your Honor please—he has so far given figures totalling—

THE COURT:

Well, he has given one hundred and twenty-one thousand dollars, and of that what we call plant damage was $54,181.32. Now, how much of that happened on May 6th?

MR. HIRSCH:

And he has given that, sir, and I will give it to you in just a second, the total. He has given the breakdown of those items. He has given items which total $24,705.83.

THE COURT:

That is May 6th damage?

MR. HIRSCH:

And that represents the May 6th damage to plant and equipment and merchandise.

THE COURT:

Yes.

BY MR. HIRSCH:

Q. Is that correct, now, Mr. Steeple? Check me on that.

A. What was that figure, again?

Q. $24,705.83.

A. That is correct.

Q. Which is the sum total of the items which you have given us—

A. That is correct.

Q. —heretofore?

A. That is correct.

Q. Now, then, will you tell us the items of damage exclusive of the machine damage occurring subsequent to May 6th for which your company made payments for repairs?

A.	Repairs to roof	$ 47.60
Q.	Keep your voice up, please.	
A.	Damaged silk	202.18
	Re-processing of soiled hosiery	3792.67
	Repairing of time recording system	1218.50
	Miscellaneous repairs and replacement of mill equipment	668.19
	Miscellaneous repairs to office equipment	1130.91
	Repairs to machinery other than knitting machines	1013.31
	Cost of labor for repairing the above damage to the plant and equipment	9145.39

Q. Now, the total of those particular items is $17,218.75?

A. That is correct.

Q. And that covers the moneys actually excepted by your company for the repair of damaged plant and equipment or the re-processing of merchandise occurring during the sit-down strike?

A. Yes.

BY THE COURT:

Q. What is the total?

A. $17,218.75.

MR. SIMONS:

If Your Honor please, I make my objection at this time also to the presentation of that figure as an item of damage.

THE COURT:

All right. Well, I am going to note it. It will have to be considered, whether that will be submitted or not.

MR. SIMONS:

That is right.

THE COURT:

Well, now, wait a minute, I am sorry, but I haven't got this thing straight. I don't want to waste any more time than I have to, but somehow it doesn't seem to me it has been very clearly presented.

BY THE COURT:

Q. You gave me a total figure of all damage, machinery, plant, everything, of $121,957.47. That is right, is it?

A. That is correct.

Q. All right. Now, that included damage on May 6th and after May 6th, is that right?

A. Correct.

Q. Then you took out of that $67,776.15 for your machinery damage?

A. That is correct.

Q. All right, and that leaves $54,181.32, which is the total of the plant damage, isn't that right? My figures are right?

MR. HIRSCH:

That is right.

THE COURT:

Certainly.

THE WITNESS:

It is a matter of just totalling those various—

THE COURT:

All right.

MR. HIRSCH:

There is still one item to be given in the testimony, and the sum total of the three main divisions will total fifty-four.

THE COURT:

What is the other item?

BY MR. HIRSCH:

Q. In addition to the repairs which were done by the Reading Textile Machine Works to damaged machinery, your company undertook the repair or renovation—

THE COURT:

Oh, yes.

BY MR. HIRSCH:

Q. —of machines which were corroded or rusted as a result of lying idle during the sit-down strike, did it not?

A. That is correct.

Q. And that work you did with your own labor?

A. And our own work.

Q. And your own work, and what was the cost of that item?

THE COURT:

That makes it clear; around twelve thousand dollars.

BY MR. HIRSCH:

Q. $12,833.11?

A. $12,833.11.

THE COURT:

Now we are all set.

MR. HIRSCH:

Does that total up, sir?

THE COURT:

Should; I can't add.

MR. SIMONS:

I would like Your Honor to entertain my objection to that last figure as well as to the others.

THE COURT:

Yes, sir, all right, I will note the objection.

MR. HIRSCH:

There is one additional item, now, wait. Well, these figures—we are out around six hundred

dollars on the sum total of these three items, but I think when we get in all of the separate sections—

THE COURT:

All right.

MR. HIRSCH:

—We will know what the total is, and it may be the total figure of $121,957.47 should be amended by six hundred.

MR. SIMONS:

The total figure instead of sixty-seven thousand, according to the figures I have here, should be $66,610.58.

MR. HIRSCH:

Well, maybe that is the answer. What is that figure?

MR. SIMONS:

$66,610.58, instead of your sixty-seven.

THE COURT:

That ought to get it. I don't believe that does it. Well, work that out later, and go ahead.

MR. SIMONS:

We will work out this figure. There is still a difference.

MR. HIRSCH:

Yes, there is still a slight difference.

THE COURT:

Yes.

MR. HIRSCH:

I will work it out. Oh, there is one other item, and then it works out, which is in the claim.

BY MR. HIRSCH:

Q. There is an additional item in the claim, Mr. Steeple, for transporting tools and materials required. How much is that?

A. I have that, $589.20.

Q. And now if we add all those—

MR. SIMONS:

I object to that, if Your Honor please, also.

THE COURT:

All right.

MR. HIRSCH:

If we add all those items together we will total the $121,957.47.

Now, if Your Honor please, that completes our proof as to physical damage with the exception of the Reading Textile Machine Works. The rest of the items of damage relate to loss of profits and cancellation of orders, and so forth.

THE COURT:

Yes.

MR. HIRSCH:

It may be more expeditious, or it may not, as you see fit, sir, to have the cross examination as to this element of the damage at this time.

THE COURT:

Yes, I think so. Is he going to testify to the whole thing?

MR. HIRSCH:

He will testify to most of the other items in so far as the books and records are concerned,

yes, but they are separate and apart from this damage, of a different nature.

THE COURT:

Well, I don't know—I don't know whether it will make much difference. Perhaps it will work out a little better the other way.

MR. HIRSCH:

All right. Well, I will continue, then. I think for the purposes of the record it may be that I ought to offer in evidence as a blanket offer all of the original memoranda, invoices, cancelled checks and other data that we have in support of these items, which will then put the defendants in position to completely cross-examine this witness on these various items and also indicate the support which we have—

THE COURT:

Yes, all right.

MR. HIRSCH:

—documentarily of these items.

MR. SIMONS:

May I object to that offer, if Your Honor please? There has been no testimony given here that would indicate that there is necessity for offering all the original books, records and items. We have had general statements as to all of this matter—

THE COURT:

All right, if you don't want them offered we will exclude them at the present time. They are here in court available if you want them.

MR. HIRSCH:

And am I correct in understanding, sir—so there is no misunderstanding later—that this proof has been put in in a way that would expedite the hearing so that the defendant can cross examine this witness on any of these items and make him support them in full detail,—

THE COURT:

Oh, absolutely.

MR. HIRSCH:

—and that I need not ask this witness each particular item of claim?

MR. SIMONS:

I did not so understand it, if Your Honor please. In the matter of going over these particular items my impression was, it was just to get a general picture—

THE COURT:

Well, Mr. Simons, now, tell me what you want.

MR. SIMONS:

Well, I—

THE COURT:

Don't just object, now, tell me how you want to get at this. Now, what do you want done?

MR. SIMONS:

It was my impression he was presenting a general picture, and then going into details,—

THE COURT:

Don't bother about what your impression was. Now, you are objecting to the procedure. Now,

what do you want done? How do you consider that you can best handle the matter?

MR. SIMONS:

Well, I think he should testify as to each particular item of damage and give us the details on that.

THE COURT:

Well, that is going to take five days.

MR. SIMONS:

I know, Your Honor, but we have discussed that in chambers, and we realize and appreciate that these items of damage—

THE COURT:

Oh, but you know that is totally unnecessary. I will permit the testimony to stand with the understanding that the witness has submitted data here—now, I am asking the witness if this is correct—

BY THE COURT:

Q. As to each individual item of damage you have the supporting data showing the cost of the repair, and you can break it down and show the cost of repair to each individual machines, can you not?

A. I can on the—on the damage to the—not the repairs to the machines which remained idle?

Q. No, as to all the other machines.

A. No, I can't—

Q. No, no,—

MR. HIRSCH:

No, he is not testifying as to that.

BY THE COURT:

Q. —I understand you are not testifying as to that, but as to all the plant damage, have you got items as to every dollar that was spent?

A. Yes.

Q. You have items, you can show exactly what it was spent for?

A. Absolutely.

Q. In each case?

A. Absolutely.

Q. You can show what was done to each machine in the plant—

A. Yes.

Q. —by your own company?

A. We have records for that.

Q. You have records for that, and you have records showing how much for broken glass, and each different part of the plant equipment that was damaged?

A. Yes, and the invoices—

Q. And you have the invoices—

A. —and the cancelled checks.

Q. —and the cancelled checks present here in court?

A. Yes.

THE COURT:

All right. Now, then, I will overrule the objection and permit the testimony to stand with that understanding, and if counsel desire it, plaintiff's counsel can offer the data in evidence. As I understand, it was objected to when it was offered, and, therefore, I don't see any reason to put it in, but it is here and it can be used for the purpose of cross examination if necessary.

If you want it in cross examination we will admit it in evidence.

MR. SIMONS:

Well, if that is the manner in which you are approaching to it, yes, we might as well have it in,—

THE COURT:

All right.

MR. SIMONS:

—so we can use it.

THE COURT:

The offer Mr. Hirsch just made is received.

MR. HIRSCH:

Well, then, everything that is here will be considered available.

THE COURT:

Everything that is here covered by the witness's description as in evidence.

MR. HIRSCH:

Now, then, I would like the record to note that the defendant in this case employed the services of Mr. Ladenheim, a certified public accountant, to examine all of these supporting items in connection with these items of repair and damage, and that he was permitted to examine all of them and made such an examination in accordance with the rules of procedure for this court.

Now, is that admitted?

MR. SIMONS:

Well, we have discussed that matter before,

Mr. Hirsch. I don't know why it has to be discussed again. We were permitted to see certain things which we did see, and I assume that we were permitted to see certain bills, and the fact that you spent certain money, but that does not mean that that is proper evidence in this court with which to charge these defendants. I mean, I think it should be clearly understood that any depositions taken before trial are not evidence at the trial—

THE COURT:

Well, they haven't been offered.

MR. HIRSCH:

I am not talking of depositions.

MR. SIMONS:

I know you are making the statement for the purpose of the record and also to indicate to the jury here we have had all this information and we have had an opportunity to see everything. Why do we argue about it now? The answer is, we have not.

MR. HIRSCH:

Come down, Mr. Steeple.

MR. SIMONS:

It is your duty to present it.

MR. HIRSCH:

Come down. I call Mr. Ladenheim.

THE COURT:

I don't believe—no, that isn't necessary.

MR. SIMONS:

That is quite irregular, if Your Honor please.

THE COURT:

No, it isn't necessary.

MR. HIRSCH:

All right, I will call him when I am through. Come up, Mr. Steeple.

BY MR. HIRSCH.

Q. Mr. Steeple, do you know Mr. Ladenheim, sitting here at the defendants' table (indicating)?

A. I do.

Q. Was he ever—

MR. SIMONS:

I object to that, if Your Honor please. I don't see the relevancy of that.

THE COURT:

I will sustain the objection.

MR. HIRSCH:

All right.

BY MR. HIRSCH:

Q. Now, Mr. Steeple, do you have the record and information here in court which will enable you to tell me the number of dozens of stockings in both the finished and greige stage on hand in your factory premises on May 6th, 1937?

A. I do.

Q. And what was the quantity of finished and greige goods you had on hand on that date? Give us the quantity in dozens of each kind.

A. Finished hose, 25,452 dozen; greige hose, that is, unfinished, 104,665; total, 130,117.

Q. And when you speak of greige goods I think

another witness has explained that to be the stocking which has not as yet been dyed?

A. Undyed and finished.

Q. Now, in the course of your business do you sell both—do you sell women's hosiery both in the greige and finished state?

A. We do.

Q. And did you on May 6th, 1937 have orders, Mr. Steeple, for both greige goods and goods in the finished state?

A. We did.

Q. Do you have the records in court which will enable you to tell us the number of dozens of orders you had on hand on May 6th, 1937 for finished goods, which means dyed, and for the greige goods?

A. As of May 6th?

THE COURT:

Yes, May 6th.

BY MR. HIRSCH:

Q. Yes.

A. We had orders on hand for greige goods of 174,338 dozen; finished hose, 83,796 dozen; total—

Q. And are you—pardon me.

A. Total, 258,134.

Q. And are you in position from the records you have here in court to tell us the dollar value of those orders on hand on May 6th, 1937?

A. I have.

Q. And what is that dollar value?

A. One million—

THE COURT:

Well, just the orders—

MR. HIRSCH:
Orders on hand.

THE COURT:
Orders on hand, the total dollar value.

THE WITNESS:
$1,433,250.

MR. SIMONS:
At this time also I enter my objection on the matter of presentation of that.

BY THE COURT:
Q. Well, that is the actual price?
A. That is the sale price.
Q. Yes.
A. On the order.
Q. The actual sale price which the buyer had agreed to pay for the goods?
A. Yes, at which the orders had been accepted.
Q. Yes.

BY MR. HIRSCH:
Q. Now, do you have records in court which will enable you to testify as to the number of dozens for which you had orders on May 6th, 1937 unfilled and which orders were subsequently cancelled by the buyer and never accepted?
A. I do.
Q. Can you tell us, of the total quantity of orders on hand for finished and greige goods, which you testified was two hundred and fifty-eight thousand dozen on May 6th, 1937, how many thousand dozen were cancelled?
A. I can.

Q. First, tell us how many thousand dozen were cancelled?

A. 109,310 dozen.

BY THE COURT:

Q. Is that both?

A. Both.

Q. One hundred and how much?

A. 109,310.

Q. All right.

BY MR. HIRSCH:

Q. And do you have the names of the persons who cancelled those orders available, if necessary?

A. The concerns, yes.

Q. And the quantity of each of those orders that was cancelled—

A. I have.

Q. —by those concerns?

BY THE COURT:

Q. Do you have that data?

A. Style, quantity.

Q. Do you have that data here?

A. We have it all here.

Q. You made it all up yourself from the books?

A. Yes.

Q. Examined the books yourself?

A. I have the supporting papers to support it.

BY MR. HIRSCH:

Q. All these records are kept under your supervision and control, are they not?

A. They are.

MR. SIMONS:

My objection goes to that also, if Your Honor please.

THE COURT:

All right.

BY MR. HIRSCH:

Q. Now, of the orders which you had on hand on May 6th, 1937, totalling two hundred and fifty-eight thousand dozen, are you able to tell us what percentage of those orders was destined for shipment to points outside of the State of Pennsylvania?

A. Eighty per cent.

MR. SIMONS:

I object to that, also, if Your Honor please. I think the latitude here is pretty wide, but just taking dollars and percentages in that manner is certainly not giving any indication of what the actual amount of the damage is. I personally feel that the burden is upon the plaintiff in this case to establish his damage and establish it properly, and I think we are going pretty far afield. I appreciate that it is a rather tedious job, it is a long job, and an arduous one, but I don't see how we can simply take figures of this kind and permit them to go into evidence without having the supporting testimony that would show that they were or were not relevant, and passing the burden on to me to try to find, when I don't know all of their books and records, to try and find from cross examination if it is there.

THE COURT:

Well, what would you suggest,—

MR. SIMONS:

Well, I feel—

THE COURT:

—that the witness read the books?

MR. SIMONS:

I absolutely feel that it is the duty of the plaintiff to present each item of damage. They are talking about orders that were cancelled. I don't know anything about their customers, I don't know what the procedure in the past has been with those customers, I don't know, I can't tell—

BY THE COURT:

Q. Well, you made the calculation yourself when you reached that figure of eighty per cent, did you?

A. Yes.

THE COURT:

All right, the objection is overruled.

MR. SYME:

Your Honor, there is another element here. This is a matter that is of vital importance to the union. All we are asking the plaintiff to do is to try his case —

THE COURT:

Surely.

MR. SYME:

—not on estimates, not on conjectures, but try his case. Now, when you say eighty per cent of it went into interstate commerce, there is not only the element of purchases, but there is the element of interstate commerce, which goes to the very heart of this case,—

THE COURT:

Surely.

MR. SYME:

—and merely a conjecture by the witness that it is eighty per cent, without any supporting evidence, and without any development of any testimony by counsel or by the witness, I think is objectionable and highly unfair to the union.

THE COURT:

Well, I don't know what you mean. He has got all the supporting testimony here. He offers it all in evidence.

BY THE COURT:

Q. Do you have the orders here?

A. Cancelled orders?

Q. Yes.

A. Cancelled orders, or the orders making up the—

Q. No, the total.

A. I don't have the—

Q. Do you have the cancelled orders in court?

A. I have those in court, yes.

Q. Yes, the actual orders.

A. And to establish this eighty per cent I made a listing of all our customers during that season.

Q. Yes.

A. And established how many were located in the State of Pennsylvania and how many were outside the State, and I have the statement showing it.

MR. SYME:

Let him produce that.

MR. SIMONS:

This man's statement just now indicates it is not the question of the cancelled orders that indicates the percentage of interstate commerce, but it is rather the amount of business done during that season with his customers.

MR. HIRSCH:

That is the important part.

MR. SIMONS:

No, it isn't.

MR. HIRSCH:

We are showing the thing—

MR. SIMONS:

We are talking about the amount of damage and discussing how much of that went into interstate commerce.

THE COURT:

Well, gentlemen, I don't think I would waste time on it. I think it is a perfectly proper way to prove the case. I will overrule the objection.

MR. SIMONS:

May I just note at this time on the record that it appears to me that the onus of disproving general figures being presented by the plaintiff in this case is falling upon the defendant in the manner of his cross examination. It means that we have to go through all of his books and records at this time in order to disprove the statements that he is making.

THE COURT:

What do you want him to do, Mr. Simons?

MR. SIMONS:

Well,—

THE COURT:

Now, wait a minute, would you suggest that he read the names of all his customers into the record?

MR. SIMONS:

If it is necessary to do that.

THE COURT:

Well, I am asking you whether you think it is necessary to do that. Now, he says that eighty per cent of these goods were shipped outside of Pennsylvania. Now, do you want to sit here for the next half hour and read the names of customers, and then have him take a pencil and add them all up, and then divide by one hundred, and see how many of those are outside of Pennsylvania and how many are inside? It is obviously out of the question and totally unnecessary to do it that way. The witness has made these calculations himself and he is now presenting the results of his figures together with all the supporting data, which is here available for you. It is the proper way to do it, and I will overrule your objection once more. Go ahead.

BY MR. HIRSCH:

Q. Now, of the orders which you had on hand on May 6th, 1937 were you able to use the finished merchandise and the merchandise in the greige which you had on hand on that date to fill those orders on May 6th?

A. As we would have been?

Q. Would have been.

A. Yes.

Q. Were you able to?

A. No.

Q. Why not?

A. Because we were shut down. We couldn't operate.

Q. But were you able to move the finished merchandise and the greige goods against those orders during the period of the sit-down?

A. We couldn't. We couldn't even move the goods that were in our shipping department already packed in shipping containers to go out.

BY THE COURT:

Q. Well, now, for example, you had the finished goods, you had twenty-five thousand dozen, plus, on hand, and you had orders of eighty-three thousand dozen. Now, those orders were all immediately deliverable, or at various periods?

A. Various periods.

Q. Various periods, and was your production such that you could have kept up with your orders?

A. Oh, yes.

Q. You could have filled them all if you had been allowed to operate—

A. Yes.

Q. —from May 6th until June 23rd?

A. We could have done it.

Q. Yes.

BY MR. HIRSCH:

Q. Now, with reference to customers, are you familiar with the customers that your company has throughout the country?

A. I am.

Q. Were there any customers who were on your books as regular customers to whom you sold large quantities of goods prior to May 6th, to whom following this sit-down strike you haven't sold any goods all but a small quantity of goods, comparatively?

MR. SIMONS:

Wait a second. I object to that, if Your Honor please.

THE COURT:

Yes, now, don't you think that is a speculative matter?

MR. HIRSCH:

Well, I will prove it through another witness in a manner that will show that it is not speculative.

THE COURT:

Yes.

MR. HIRSCH:

This is the list of customers—

MR. SIMONS:

Well, let's not argue the matter.

THE COURT:

I know exactly what it is, but I just doubt whether it is a proper element of damage.

However, going back to the other question, in view of the statement of counsel for the defense that he is being subject to an undue onus in cross examination, I think I will permit you to show, or to state to the Court, if you don't want to do it in the presence of the jury, what

opportunities counsel for the defense has already had to examine the data.

MR. HIRSCH:

I will state it any way that the Court—

THE COURT:

Suppose you make that statement at side bar, because I want that to appear. I don't want it to appear that I am throwing any hardship on the defense.

(The following occurred at side bar:

THE COURT:

In view of Mr. Simons' statement, I am going to ask Mr. Hirsch to state what opportunities have already been afforded to counsel for the defense.

(Discussion off the record.)

THE COURT:

I am still going to ask Mr. Hirsch to make the statement. If you don't agree to it, just say so.

MR. HIRSCH:

Pursuant to the request of Mr. Simons, who is attorney for the defendant, a Mr. Ladenheim, certified public accountant, was permitted to come to the premises of the Apex Hosiery Company and examine all of the Apex Hosiery Company's general books and records, including ledgers, journals, cash books, all invoices in connection with damage, all payments for damage, all cancelled checks, and he was given everything that we had, with one exception; he was not given the list of

our customers by name, but the total, in view of the fact that the union might use that information—

THE COURT:
Yes.

MR. HIRSCH:
—to our detriment.

THE COURT:
All right, now.

MR. HIRSCH:
But as to that matter we have agreed that Mr. Bachman through his accountant may examine our total as to sales and check the accuracy of it.

THE COURT:
Yes. Now, Mr. Simons, have you any comment to make on Mr. Hirsch's statement?

MR. SIMONS:
Yes, they refused to let us see the cash book.

MR. HIRSCH:
You saw everything but the item of salaries, which we refused to divulge.

THE COURT:
Yes.

MR. HIRSCH:
But as to that item we also said Mr. Mulcahy may check that, because we didn't think it was advisable for the union to know that.

THE COURT:
They didn't see the cash book, but the cash book is here now available if they want it.

MR. SIMONS:

How about the general ledger?

THE WITNESS:

General ledger?

MR. HIRSCH:

Did they see it?

THE WITNESS:

They could have. It was available to them.

THE COURT:

It is stated that the general ledger was available and offered to them.

MR. SIMONS:

I am told by Mr. Ladenheim that he did not see the cash book except certain particular items.

THE COURT:

Well, all right.

MR. SIMONS:

I didn't see the general ledger. There was no way of checking back to find out the accuracy of any of the figures. All we have is a copy of those figures that they have set forth in the statement of claim.

MR. HIRSCH:

Let me make this statement for the record. Last Friday I was on the premises of the Apex Hosiery Company, and Mr. Ladenheim was there. At that time he was asking to see the list of salaries for checking purposes. He also asked to see another account. We gave him that other account—I forget the name at the moment—and refused to give the

salaries except through Mr. Bachman. I then called Mr. Syme on the phone, and that was agreed upon. We then asked Mr. Ladenheim whether he had been given access to every book and record that we had for which he asked, other than the item of salaries, and his answer was "Yes".

THE COURT:

Well, all right, if this becomes important at all we can take testimony on it, if necessary. It doesn't need to be in the presence of the jury because it has only to do with the procedure of presenting damages, but it is all right.

(Discussion off the record.))

BY MR. HIRSCH:

Q. Will you tell us, Mr. Steeple, what the total volume of business was for the year 1936 of your company, in dollars?

MR. SIMONS:

I object to that, if Your Honor please.

THE COURT:

Well, again, I don't know why. I imagine he is going to show profits.

MR. HIRSCH:

I am laying the groundwork now for the volume of business that was done.

THE WITNESS:

Is that 1936?

MR. HIRSCH:

1936.

MR. SIMONS:

Your Honor is overruling the objection, I understand?

THE COURT:

Yes. I assume if Mr. Hirsch just asked him what the profit was you would object to that on the ground there was no supporting data, so he is now starting to give you figures on which it can be based, I assume. Go ahead.

A. Total sales in 1936 were $4,905,743.38.

THE COURT:

All right.

BY MR. HIRSCH:

Q. Now, then, do you have a record and do you have your books and records in court to submit the question or your answer to the question which I am now about to put to you, as to the total amount of business your company did during the first four months of 1937 and the first five days of May, 1937, both in dozens and dollars? Do you have those records here?

A. The sales records are here, yes, to show the dozens and dollars.

Q. Will you tell us for the period of January 1st to May 1st, 1937 what the total in dozens and dollars was as done by your company?

THE WITNESS:

May 1st?

MR. SIMONS:

May 1st, or 6th?

MR. HIRSCH:

May 1st. I will bring it down, because, if Your Honor please, we will show that the profit calculations which were made by certified public accountants were for—

THE COURT:

All right.

MR. HIRSCH:

—the first four month period, and then—

THE WITNESS:

What was that question again, Mr. Hirsch, the first four months of 1937?

MR. HIRSCH:

Yes, totals in dozens and dollars.

THE WITNESS:

I have the dollars here. I am not certain I have the dozens. I have those up to May 6th. I can very readily re-set it to May 1st by deducting the May shipments.

BY MR. HIRSCH:

Q. Before you answer, is this the sheet you were looking for?

(A paper was shown to the witness.)

A. I have that.

BY MR. HIRSCH:

Q. Was this sheet prepared by you for me?

A. I have that, but that only shows the sales.

Q. Sales in dollars?

A. I have those here.

Q. Does this show the sales in dollars up to May?

A. That shows the sales in dollars, yes.

Q. In dollars, up to May 1st?

A. That is right.

Q. Do you have a sheet similar to this?

A. Yes, I have that here.

Q. Well, tell us what the sales in dollars up to May 1st were.

A. $2,220,946.40.

Q. Was that the largest total of sales for the first four months of 1937 larger in dollar amount than the corresponding four months of 1936?

A. Yes, it was.

Q. And was the hosiery business in general throughout the country during the first four months of 1937 larger than in 1936, if you know?

MR. SIMONS:

I object to that, if Your Honor please.

BY MR. HIRSCH:

Q. First, answer, do you know?

BY THE COURT:

Q. Well, have you got data on that?

A. To my knowledge, yes.

MR. SIMONS:

I object to that, if Your Honor please, and ask the answer be stricken from the record.

BY THE COURT:

Q. What is the basis of your knowledge?

A. Reports compiled by the National Association of Hosiery Manufacturers.

THE COURT:

Well, I suppose if counsel demands the original reports we will have to have them, so that I will sustain the objection at this time.

MR. HIRSCH:

I have the president of that association here, so I will cover that with him.

THE COURT:

Oh, yes. Now, you help, too. Don't cover everything twice by two witnesses. If you have got another man to testify what is the use of asking this witness?

MR. HIRSCH:

Well, I only wanted the one question, the general question.

THE COURT:

I know.

MR. HIRSCH:

I wasn't going to ask him details.

THE COURT:

Don't duplicate everything.

BY MR. HIRSCH:

Q. How many dozens did you ship during the first four months of 1937?

A. 404,177 dozen.

Q. And one hundred and seventy-seven dozen?

A. Yes.

Q. And how many dozens did you ship during the first five days or six days, whatever it was, of May, 1937?

A. 11,056.

Q. Now, were there any stockings on hand in your inventory on May 6th, 1937 which were of a seasonable character?

A. Yes, there were.

Q. First, explain in what respects they were seasonable.

A. They were knee high goods, which are considered and are summer style.

Q. Summer style?

A. Summer style.

Q. Yes.

A. We had brown heel goods, which was in the same category. I have the memorandum, I will refer to it.

Q. How many dozens of those goods did you have on hand?

THE COURT:

Now, wait, he wants to look at his memorandum.

A. 10,669 dozen.

BY THE COURT:

Q. Ten thousand—

A. —six hundred and sixty-nine dozen.

THE COURT:

All right.

BY MR. HIRSCH:

Q. After you resumed business operations were you able to dispose of those goods?

A. We were not.

BY THE COURT:

Q. Well, did they go oh, they didn't go in the cancelled orders, of course?

A. No.

THE COURT:

No, that is all right.

BY MR. HIRSCH:

Q. Did you dispose of some of them?

A. Very few.

Q. And how much below the price for which they could have been sold had you been permitted to conduct your business in the usual and ordinary course were they sold for?

A. I would say about two dollars a dozen less.

Q. And what in your opinion is the value of the goods still on hand of this seasonable character as compared to the value those goods had in May of 1937, when they were in season?

MR. SIMONS:

If Your Honor please,—

A. At least two dollars

MR. SIMONS:

Wait a second. May I object to the question? I think he is covering several angles of this one thing. First of all, he has asked the question as to how much they sold for less than what they were worth. I don't believe that that is an answer to an item of damage. It is a question of what their value was, what the market value was at the time.

MR. HIRSCH:

I think that is fair.

MR. SIMONS:

He also has not qualified Mr. Steeple as one knowing the market value of the merchandise.

THE COURT:

Yes, I think that is correct.

MR. SIMONS:

He was qualified as the office manager.

THE COURT:

I think that objection—

THE WITNESS:

I am familiar with the price and the market.

BY THE COURT:

Q. All right, now, what was the price per dozen of these seasonable goods?

A. I may qualify that by saying in addition to my duties as office manager I do sales work, also.

Q. Now, all right, now, what was the price per dozen of these seasonable goods, the market price per dozen, that you had on hand on May 6th.

BY MR. HIRSCH:

Q. At that time what was their market value?

A. I couldn't give you each style separately, I haven't broke that up.

THE COURT:

I think you will have to do that. You can do that by tomorrow, if you want to claim for that item.

MR. HIRSCH:

And also determine by tomorrow the price for which you sold the styles and the value of the styles—

THE COURT:

Yes, I think so. I think Mr. Simons's objection is correct on that.

MR. HIRSCH:

I am agreeable on that. We will determine that figure.

THE COURT:

Yes.

THE WITNESS:

Would that be the market value now or at that time?

THE COURT:

Well, you want the market price as of May 6th,—

THE WITNESS:

As of May 6th.

THE COURT:

—and then the market price of the same things as of June 23rd.

THE WITNESS:

Yes.

THE COURT:

That is what you want, because you weren't prevented from selling them after June 23rd.

MR. HIRSCH:

Well, it doesn't matter what was done with them after that.

THE COURT:

No.

MR. HIRSCH:

Yes.

THE COURT:

Unless the price went up.

THE WITNESS:

As a matter of fact, we have the vast majority of those goods still on hand, for which we are not able to sell—

THE COURT:

Well, your counsel will instruct you on what the proper measure of damages is. Of course, if that loss was all recovered and they sold for more than the market of May 6th there wouldn't be any damages involved, in fact, there would be a distinct benefit.

THE WITNESS:

That don't exist, I assure you.

THE COURT:

Well, I suppose not.

BY MR. HIRSCH:

Q. Now, did you have any materials on hand on May 6th, 1937 which by reason of the fact that you were unable to use them during that immediate season, you were unable to use at all, and sustained

a loss on; and, first, if your answer is "yes", tell us what they were and give us specific details.

A. The answer is, yes.

Q. And what was the material?

A. We had the webbing, which is used in the manufacture of the top of the knee high stocking.

Q. Is that an elastic webbing?

A. An elastic webbing.

Q. Now, tell us how much of that you had and what was necessary or necessitated by reason of this strike trouble.

A. We had on order with the source of supply a considerable quantity of that webbing, and when we shut down, naturally, the season passed for—the summer season passed for the knee high goods, and as we had, naturally, that commitment with the source of supply,—

Q. And what was the amount?

A. —eventually, eventually we struck an agreement with them whereby we would return to them all of the webbing which we had on hand, which amounted to 46,800 yards, and for which we originally purchased at a cost of five and one-half cents, we agreed to return that to them without any charge; in other words, give it back to them for the consideration of their cancelling the balance of our order.

Q. And the cancelling of the balance of your order was necessitated by the fact that the season for that goods had passed?

A. Yes.

Q. And you had no need for it?

A. That is true.

Q. And the five and one-half cents per yard

was money actually invested by you in this forty-six thousand, eight hundred yards, and lost by you as a result of your returning that merchandise to them without getting anything for it?

A. That is true. I have the copy of the memorandum.

BY THE COURT:

Q. How much does that amount to?

A. I don't have the amount because we returned it, just issued a memorandum invoice, no charge to them.

Q. Well, all you do is multiply five and one-half—

A. Multiply it out, yes.

THE COURT:

Maybe I can do that.

MR. HIRSCH:

$4,640.00, is that correct?

MR. SIMONS:

No, no.

THE COURT:

No.

THE WITNESS:

No.

MR. HIRSCH:

No, I am wrong, way wrong. I moved my second bracket of figures over too far.

THE COURT:

Twenty-five, something.

THE WITNESS:
$2,574 is correct.

MR. HIRSCH:
I am sorry; $2,574.

THE COURT:
$2,574.

BY MR. HIRSCH:

Q. Do you have with you the books and records which would enable you to tell us the total quantity of merchandise shipped by you during the period May 6th, 1937 to December 31, 1937,—

A. Let me have—

Q. —both in dollars and dozens?

A. Let me have the period again, please.

Q. May 6th, 1937 until December 31, 1937, the actual quantity of goods shipped by you in dollars and dozens.

A. From May 6th?

Q. Correct.

A. 275,799 dozen.

Q. And the total dollar value?

A. $1,574,904.29.

Q. So that during the first four months of—during the period January 1st to May 6th, 1937,—

A. You have to use April, there. You get May 1st in there again.

Q. —you shipped a total of approximately four hundred and fifteen thousand dozen.

A. From when?

Q. January 1st to May 6th, 1937, you shipped a total of approximately around—

A. Four hundred and five thousand.

Q. To May 6th?

THE COURT:

Oh, no, May 6th.

MR. HIRSCH:

Add eleven thousand more.

THE COURT:

Around four hundred and fifteen.

MR. HIRSCH:

Four hundred and fifteen thousand dozen,—

THE COURT:

That is right.

MR. HIRSCH:

—as compared to two hundred and seventy-five thousand dozen for the succeeding eight-months period, in round figures.

THE WITNESS:

That is right—I don't quite follow you on that there—

MR. HIRSCH:

404, and 11,056 makes approximately four hundred and fifteen thousand, up to May 6th.

THE WITNESS:

That is right.

BY MR. HIRSCH:

Q. The dollar value of which was—

A. Wait a minute, you have them backward, I think you—

THE COURT:

No, he has that exactly right, it is absolutely right.

THE WITNESS:

That is right.

BY MR. HIRSCH:

Q. And the dollar value of those four hundred and fifteen thousand dozen was approximately two million, two hundred and ninety thousand dollars? Will you figure that up and check me? Oh, maybe I didn't ask you to give the eleven thousand; what was the total sales value in dollars for the 11,056?

A. $63,207.47.

Q. Therefore, the total dollar value for the period January 1st to May 6th, 1937 was $2,284,153.

A. Let me get this again, from what dates?

Q. From January 1st to May 6th, 1937.

A. Yes, $2,284,153.

Q. As compared with the total sales during the last eight-months period of $1,574,904.29?

A. That is right.

Q. And the reason for the diminution in the amount of business you did and the shipments you made was—

A. Failure to operate.

Q. Pardon me?

A. Failure to operate.

Q. Was it failure, or inability?

A. Inability.

MR. HIRSCH:

Cross examine.

THE COURT:

You have another witness to show the profit? That is to be shown by the C. P. A.?

MR. HIRSCH:

Yes, I have the accountant here who kept the records.

THE COURT:

All right, cross examine.

MR. SIMONS:

If Your Honor please, may I first of all object to the testimony that he has given on the same grounds I have objected before; and I move at this time that all the testimony he has given of a general nature be stricken from the record.

THE COURT:

The motion is denied. I think the Court will recess for ten minutes at this point.

(Recess at 3:10 o'clock P. M.)

MILTON S. STEEPLE, resumed.

Cross Examination

MR. SIMONS:

Are you finished?

MR. HIRSCH:

Yes, there are some other things I will have to get together for tomorrow.

BY MR. SIMONS:

Q. Now, Mr. Steeple, so that we will have a sort of a continuation of where you just left off, you

stated that there had been a decline in the production of your plant at the latter part of 1937, is that correct?

A. Yes.

Q. Now, you stated that you had all the supporting statistics of the National Association to show the business conditions during 1937?

THE COURT:

Well, but he didn't testify to that.

THE WITNESS:

I didn't testify to that.

MR. SIMONS:

He said that before.

THE WITNESS:

I said it was based on that. I didn't testify to that.

THE COURT:

No, but he testified to nothing about general business conditions, that was all withdrawn, and Mr. Hirsch stated he would call the president of the association for that purpose. This witness hasn't testified on that point at all.

MR. SIMONS:

All right.

BY MR. SIMONS:

Q. You stated that your loss in business during the latter part of 1937 was due to the fact that you were closed, alone, is that true?

A. Yes.

Q. Now, as a matter of fact, wasn't there a very general slump in the hosiery business during the entire latter part of 1937?

A. No, there was not.

Q. Wasn't there quite a conference held of all hosiery manufacturers during the latter part of 1937 to discuss the very situation of the condition of the hosiery industry?

A. I know of no such conference.

Q. Do you know—did you attend any conferences at all of the National Association of Hosiery Manufacturers?

A. I did not.

Q. And who would attend such meetings if they were held?

A. Mr. William Meyer.

Q. Mr. Meyer? What is that?

A. Mr. William Meyer.

Q. Mr. Meyer, and if such meetings were held you would know nothing about them?

A. No, I wouldn't.

Q. And, therefore, if there was a slump in the market and there was such a meeting for the purpose of discussing that, you don't know anything about it?

A. No.

Q. But if there had been such a slump that might have been the cause for the drop in the amount of sales during the latter part of 1937?

A. If there had been, but there wasn't.

Q. Well, you said you don't know, there had been no discussions as far as you knew?

A. Well, there are other means of knowing that, other than through the statistics. There is trade papers, and my contact with the trade.

Q. Do you have the monthly bulletin of the Association, manufacturers' Association?

A. The company receives that, yes.

Q. The company receives that. Do you have those bulletins here?

A. No, I do not.

MR. HIRSCH:

Well, I happen to have one, although he doesn't know I have.

MR. SIMONS:

No, now, wait a second.

MR. HIRSCH:

All right, that isn't it. We will use it in our case.

BY MR. SIMONS:

Q. Now, your position was just the office manager?

A. General, general office manager. I had other duties, other than just the office.

Q. Well, what other duties do you have?

A I purchase. I sell.

Q. What do you purchase?

A. Purchase the supplies for the finishing department, the majority of them.

Q. Yes, and what else do you do?

A. I sell.

Q. Well, when you sell, do you mean you go out on the road,—

A. Yes.

Q. —or do you sell right from the plant?

A. No, I go out on the road.

Q. Now, on May 6th, 1937, you were in the office how late that day?

A. May 6th?

Q. Yes.

A. Between three and four o'clock, when the sit-down took place.

Q. And you left at four o'clock?

A. Unwillingly, I left.

Q. Well, you left the premises at four o'clock that afternoon?

A. Yes, I had to leave.

Q. And at the time that you left there was quite a crowd around there?

A. Yes, there was.

Q. And you didn't have any opportunity to observe everything that was going on, nor do you know what happened after you left?

A. I surely don't know what happened after I left.

Q. And you never came back to the plant, until when?

A. The very next morning.

Q. And how long were you there the following morning?

A. All the next day, until about five o'clock.

Q. And during that time you were in the office all that time?

A. I was in the office and in—in the wareroom.

Q. In the office and wareroom. The wareroom adjoins the office?

A. That is correct.

Q. And what were you doing there all that day?

A. Nothing.

Q. You mean just sitting around the office and the wareroom?

A. We had one line of telephone open which we were able to put through in Mr. Struve's office, the switchboard having been torn out, and I had three or four people to sit around there, of which I was one, taking the calls that came in over this one line, alternating.

Q. And that is all you did all day?

A. There was nothing else we could do.

Q. Then you left at the end of that day?

A. I did.

Q. And you came back again when?

A. I should judge about a week or ten days later, to get some records.

Q. And you got those records?

A. Yes, I—

Q. And were you—

A. We had to ask the police—

Q. Well, you got the records after you came in?

A. We finally got the records.

Q. You were in there how long for the purpose of getting those records?

A. Oh, say about an hour.

Q. And that was also in the office?

A. Yes.

Q. And then you went out?

A. Yes.

Q. And came back again when?

A. Do you want me to fix a date?

Q. If you can.

A. Well, it was shortly after the signing of the agreement.

Q. You didn't come back there until about July 29th, 1937?

A. That is correct.

Q. Let's say how many days after that?

A. Few days, few days after that.

Q. The 31st?

A. I should say so.

Q. Now, you take an inventory, physical inventory, once a year?

A. Twice a year.

Q. Twice a year, and when do you take it, December 31st?

A. June 1st and December 31st.

Q. And you took no physical inventory on April—on April 30th of 1937?

A. That is correct.

Q. You did or did not?

A. Did not.

Q. Did not, and you took no inventory on May 6th of 1937?

A. Naturally not.

Q. Did you or did you not take a physical inventory on July 31st,—

A. We did.

Q. —1937? Now, who prepared all the figures that you have read to us here today as to the damage done on May 6th and the damage done thereafter? They were your figures?

A. I didn't actually make the entries in the books, no.

Q. No, I don't mean—

A. They were done under my supervision.

Q. I understand, you have an office force that does that?

A. That is right, and our accountants work on it, also.

Q. But you compiled those figures for their entry into the books?

A. Well, it is, st a matter of setting up the books in the first place and passing the invoice. It took the same routine as any other invoices, other than they went into a separate set of books.

Q. And you were the one who determined whether or not the damage was attributable to the occurrence on May 6th, or whether they were attributable to occurrences on a later date?

A. It was up to me to pass the invoices for payment.

Q. And you received in the analysis of these charges as to whether they belonged to the period —or, rather, pardon me—whether they belonged to the damage that occurred on May 6th, or whether they belonged to the group chargeable at a subsequent date?

A. Yes, but there was instructions given—

Q. Instructions given—

A. —that anything—instructions given that anything that was ordered or was required, that a record was to be kept, and it was to be designated that that was due to the damage.

Q. And you are the one who determined as to what classification it should be placed in?

A. Yes.

Q. Do you have those records for the glazing here?

A. I have the bills.

Q. May I see them?

A. They should be in the top folder.

(Records were handed to the witness.)

THE WITNESS:

Do you want them?

MR. SIMONS:

Yes, if you don't mind, please.

MR. HIRSCH:

You better take all these in case Mr. Simons asks you other questions.

BY MR. SIMONS:

Q. Now, you have handed me the folder showing the glazing of the windows, which is a general item that you have. I will take the first bill that you have here—all right if I take these apart, Sylvan?—and ask you to look at this and tell me what that is about.

A. It is, as it states, for two lights of polished plate glass.

Q. What is that?

A. Two lights of polished plate glass.

Q. Now, you have marked on there one-eighth of an inch polished plate glass?

A. Yes, that is right.

Q. Now, can you tell me when that plate glass was broken?

A. That is a part of the May 6th damage, on May 6th.

Q. No, I asked you when it was broken.

A. May 6th.

Q. How do you know it was broken on May 6th?

A. Because it was segregated in there, the people that went in the plant kept a record of these here and guided me in making the segregation.

Q. Who guided you in making the segregation?

A. Well, Mr. Harper.

Q. Yes, who else?

A. Mr. Struve.

Q. Yes.

A. Mr. Harper, through Mr. Struve, and the various other people that made the repairs.

Q. You mean the Pittsburgh Plate Glass guided you in this matter?

A. No, men in our plant, not the Pittsburgh.

Q. And they told you what, to what period they belonged?

A. Yes, they did.

Q. You personally had no knowledge of it at all?

A. Well, we had—we had a record—

Q. I am talking about you personally.

A. Well, I saw some of the plate glass, I saw the office plate glass broke.

Q. Well, now,—

A. The next day.

Q. —you couldn't say that all of these bills for plate glass and glass were for breaking on May 6th, you personally couldn't say that?

A. I couldn't say it—I didn't see every one of them broken, I didn't see every one of them put in.

Q. Now, you have—

A. Any more than I see everything that comes into our plant, that I have got to approve.

Q. Therefore, you personally don't know whether or not any of this glass was broken on May 6th?

A. Oh, yes.

Q. Or, rather, I should say whether all of this glass was broken on May 6th, or broken on some other day.

A. It would be broken on May 6th. I was in the plant on May 7th.

Q. Could you testify from the stand that every item of glass that you have in this folder was broken on May 6th? Would you want to swear to that?

A. Well, I would have to—this has been two years ago—I would have to refresh my memory on that.

Q. Well, you have been testifying about it all day. You have had ample opportunity to think about it.

A. Well, I have had other things to think about, too, figures. I would say—

Q. Would you swear—

A. I would say to the best of my knowledge all of that there items that are in that folder there, representing that item, was damage due—that took place on May 6th.

Q. And you say that despite the fact that you were there until four o'clock that afternoon and left, and didn't come back until the following day, and remained in the office all that day and didn't go outside at all?

A. That is right.

Q. And what do the other notations on this bill indicate?

A. The other notations, the price and the discount, extension.

Q. It indicates stamped on there?

A. Stamped where?

Q. All those stamps.

A. Those stamps that appear in there?

Q. Yes, everything.

A. Date it was paid, stamp, insurance claim account, and entered.

Q. And the same thing appears on all of these other items?

A. Yes, it does. That is only our methods of keeping these accounts separate.

Q. You mean you kept these payments separate from your other business?

A. Yes.

MR. SIMONS:

May I mark the whole folder for identification at this time?

MR. HIRSCH:

Will you give all these books and records a general number, and then he can mark anything he wants.

MR. SIMONS:

We have had D-1. I will mark this D-2.

MR. HIRSCH:

All right.

(Books and records generally were designated Exhibit P-17.)

(Folder relating to glazing repairs and supplies was marked Exhibit D-2 for identification.)

BY MR. SIMONS:

Q. Now, all the figures that you have given us today are for moneys that you claim that the company has expended?

A. That is correct.

Q. Now, as a matter of fact, you have been reimbursed for all that, haven't you?

MR. HIRSCH:

That is objected to. Mr. Simons knows that is a highly improper question. Yes, we were insured for some of this damage, if that is what he wants to know, and I still think it is an objectionable question, and he knows better than to ask it.

MR. SIMONS:

Mr. Hirsch, we have all this evidence here. There is nothing that has to be hidden from the jury.

MR. HIRSCH:

We are not hiding anything.

THE COURT:

Well, now, gentlemen, members of the jury, the question of whether or not the plaintiff was insured has absolutely nothing to do in fixing the damages. You are to fix the actual damages that occurred, without regard to whether any of them were covered by insurance or whether they were not. The question was an improper question and—

MR. SIMONS:

I didn't ask it for that purpose, if Your Honor please.

THE COURT:

I don't care for what purpose you asked it.

MR. SIMONS:

There were separate records kept, and there

were notations, I thought we might as well get it in to see why these records were kept.

THE COURT:

Mr. Simons, I am not asking for any explanation. I am stating to the jury the question was an improper question. I should think you would have known it. If you didn't, that is all right, I will accept your statement, but the jury will not regard the question of insurance at all in this matter. It hasn't anything to do with it. It doesn't reduce the damages or affect the damages in any way.

MR. SIMONS:

There is no doubt about that, Your Honor.

THE COURT:

All right, now, we all agree to that. Now, let's go on to the next thing.

BY MR. SIMONS:

Q. By looking at these bills can you tell us where this glass had to be replaced?

A. No, I couldn't.

Q. What?

A. No, I couldn't.

Q. Well, is there any way—

A. Not by looking—

Q. —any way that you could find out, by these bills or any other information that you have on hand, as to where this glass was replaced?

A. I suppose we still have records that show where, exactly where it was placed. I can't say, if we bought six table tops, where each table top went on, glass table top, I can't say that. We tried

to group this stuff together to get the plant in shape as quick as we possibly could. We wasn't trying to set up any histories on it.

Q. Therefore, as far as you know, this is the money that you have expended for glass, but you don't know just where or how it was applied, or what happened?

A. The major portion of that, I know, went into the windows.

Q. Yes, well, I say, outside of the fact that this is money expended for glass, I mean, you can't from just looking at the bills tell us to what in particular it applied?

A. The majority of it I can, there.

Q. Where it is specifically mentioned?

A. The majority portion of the bills of the Pittsburgh Plate Glass is the glass, and the other bill for labor is placing the glass in the broken windows.

Q. Well, just for the purpose of clarifying the matter for a second, only, without spending any more time, you have one-eighth inch polished plate glass. You wouldn't know where that went?

A. No, that is a small item.

Q. A small—

A. I would know where the major items went, though.

Q. You have a number of glass windows throughout the whole building, don't you?

A. That is true.

Q. And in the ordinary course of business as it goes on there are breakages in the various glass?

A. Oh, I suppose there is, occasionally.

Q. I mean, you have had occasion in the past to repair some windows, put in new glass?

A. I suppose so. Glass will break.

Q. And glass cracks sometimes?

A. I suppose so.

Q. And there may have been some cracked glass at the time on May 6th, 1937?

A. I wouldn't say that there would be cracks. It is usual to take out cracked glass.

Q. You don't know definitely whether there were or were not?

A. I couldn't say whether there was one cracked pane of glass in the building, no.

Q. Or whether there were more than one, you don't know?

A. No.

BY THE COURT:

Q. Can you say there was a negligible amount, if any?

A. No, there was not.

MR. HIRSCH:

You didn't hear the Judge.

THE WITNESS:

Maybe I misunderstood you.

BY THE COURT:

Q. Well, can you say that if there was any cracked glass in the building at the time on May 6th, before the mob came in, the amount was so small as to be negligible?

A. Yes, I could say that.

THE COURT:

All right.

BY MR. SIMONS:

Q. May I see the one for the plumbing repairs and supplies?

A. Plumbing?

Q. Yes, please.

(The witness produced the folder.)

BY MR. SIMONS:

Q. As far as the question of the bills here for the plumbing repairs and supplies, I mean, your knowledge as to the occurrences, and when they occurred, and just what happened, would be the same as the glazing?

A. That is true.

Q. So we don't have to go over all of that testimony?

A. Yes.

Q. And all you know is that these bills were presented and were paid?

A. I know that the work was performed.

Q. Yes, and they were presented and were paid?

A. Yes.

Q. You know nothing about each particular item?

A. Each detail.

Q. You didn't check it before, nor did you check it after that?

A. I approved the bills, after they had been checked by the person that supervised.

Q. But as far as the mechanical work was concerned—

MR. HIRSCH:

Let him finish his answer.

BY MR. HIRSCH:

Q. You did what?

A. I checked the invoice after the person who actually saw the work performed assured me that the work had been performed in accordance with the invoice.

BY MR. SIMONS:

Q. And you just took the perfunctory—you have the business of checking these invoices and making sure they should be paid, you had no personal knowledge as to these items that appear on these invoices except the fact that someone told you that that was the fact?

A. Well, particularly in this plumbing, that would possibly be true. There are a lot of the things that I directly let the contract for, as I stated before.

Q. Well, that is not true as far as plumbing or as far as glazing?

A. Not every individual item on there.

MR. HIRSCH:

Well, wait, as far as glazing, it is.

MR. SIMONS:

He didn't say that.

THE WITNESS:

Yes, I let the glazing contract myself.

BY MR. SIMONS:

Q. You let that yourself?

A. I let that myself, after much difficulty.

Q. May I see the hardware repairs and supplies?

(The witness produced the folder.)

BY MR. SIMONS:

Q. Now, the payments for the hardware repairs and supplies were also done under your supervision, is that right?

A. Yes.

Q. Now, taking this first bill that you have here, I ask you to look at this and tell me what this is all about.

A. What do you mean by what it is all about? I don't get it.

Q. Well, now, there is a bill in your group here. Explain it to me. I can't understand it.

A. This is material—

Q. I can't read that bill.

A. The material on this bill, this invoice, is material which the men in the plant who had charge of making these repairs ordered,—

Q. Who ordered it?

A. —to make those repairs. They were ordered in the regular, routine manner.

Q. Who ordered it?

A. This would possibly be ordered by—

Q. No, do you know who ordered it?

A. Mr. Struve would possibly order this.

Q. Well, now, did Mr. Struve order that?

A. I didn't order this directly, no.

Q. Do you know who ordered it?

A. Mr. Struve would order it.

Q. Well, did Mr. Struve order it?

A. Yes.

Q. Did Mr. Struve order that particular bill, that merchandise?

A. Yes, I should imagine he would.

Q. I am asking you if you know. If you don't know, say so, if you are not sure.

A. Well, he would be the only one who would be authorized to order, that is the reason I state Mr. Struve would order it.

Q. Is there anyone else who might have ordered it?

A. No one else was authorized to order any material.

Q. And you think that Mr. Struve was the one who ordered the materials on that bill?

A. Yes.

Q. May I have that? This bill calls for one-eighth quart galvanized water pot, and eighteen rubber crutch tips, two pc.—I don't know whether it is two per cent—9 by 9 alum., six dozen snaps, three special panel, and several other items. Do you know what this applied to?

A. I do not, other than that it was passed through for payment by the people that done the repairs.

Q. And you checked it?

A. Yes, I checked with them.

Q. And that is all you know about it?

A. That is right.

Q. And the same will apply to the other bills here?

A. Yes, I suppose so.

MR. SIMONS:

Will you mark this for identification, and this one, too?

(Folder relating to plumbing repairs and supplies was marked Exhibit D-3 for identification).

(Folder relating to hardware repairs and supplies was marked Exhibit D-4 for identification).

BY MR. SIMONS:

Q. May I have the electrical repairs and supplies, please? Look, why don't you let me have them here? I will put them on Mr. Hirsch's desk,—

A. That is fine.

Q. —and then they won't be bothering you.

A. There they are.

Q. I will take them one at a time. Was the repairing of this electrical work under your supervision and care?

A. Indirectly, yes.

Q. What was that?

A. Indirectly. The bills came through to me O. K.'ed.

Q. Now, get it straight,—

A. Not the work itself.

Q. Get it straight, so I don't have to ask too many questions on all these and prolong it unnecessarily. I am not now referring to the matter of payment.

A. Yes.

Q. I think we understand each other, all payments were made by you, and after you were told to pay the bill. Now, what I am asking is whether you know personally about the work that was done, this electrical work that was done.

A. No, I don't. Mr. Struve would also be the one to testify on that.

Q. You know nothing else about this bill except that it was paid?

A. That it was assigned to that part of the work.

Q. Mr. Struve told you to pay it?
A. Yes.
Q. As a result of which you paid it?
A. Yes.

MR. SIMONS:
I ask that that be marked for identification.

(Folder relating to electrical repairs and supplies was marked Exhibit D-5 for identification.)

BY MR. SIMONS:
Q. Well, now, let me ask you, maybe we can shorten this whole thing, does the same situation apply to all of the bills which you have here?
A. No.
Q. All right, well, let's take them one at a time. How about this painting bill? Do you know anything about that?
A. That would be in the same category.

MR. HIRSCH:
Let him look at all these files, and ask him—

BY MR. SIMONS:
Q. You know nothing about the painting bill personally except you were told to pay it?
A. I will answer "yes" or "no"; no, no.
Q. You mean you don't know anything about it?
A. No, don't know.
Q. All right. How about this new front door?
A. I know about that.
Q. What kind of a door did you have, front door, did you have there before?
A. Very same type of door we had replaced.
Q. And to furnish and erect the door was eighty-eight dollars, is that correct?

(A bill was shown to the witness.)

A. I don't think this is the entire bill.

BY MR. SIMONS:

Q. Well, now, we are talking about the front door. You gave—

A. I mean, the entire bill for the front door. I think this only includes the trim.

Q. Well, now, will you read that bill? What does it say?

A. Furnish and erect two Kal., 102-P. 3 by 7 approximate, 2 Kal. frames, forty foot, forty foot, four inch trim, $88.00, but it is my recollection that the door cost more money than that.

Q. Yes, I will get this other bill in just a second.

A. If I recall correctly, it was somewhere around $274.

Q. Well, now, what did this refer to?

A. Well, the trim all around on the outside of the door was broken, too, not only the door, the molding around.

Q. Well, don't you have to put the trim in before you could put the door in?

A. Absolutely.

Q. And is this the bill you were referring to about the door itself?

(A bill was shown to the witness.)

A. Yes.

BY MR. SIMONS:

Q. And that was put in when?

A. Approximately the date of this invoice.

Q. August 20th?

A. Yes.

Q. So first they put the door in, and then on September 28th they put this other bill in of the $88.

A. I don't think so.

Q. Well, the bills are dated different dates, aren't they?

A. They may be. They may have rendered a bill later on.

Q. In other words, you mean they rendered a bill for the trim after the door was in?

A. That is possible.

Q. Yes.

A. But I am sure they didn't do the job backwards, I know that.

Q. But it is quite possible that you may be mistaken as to just what these bills represent?

A. No, sir. I can definitely identify those bills as being the cost of replacing the door and the molding around the door.

Q. Now, this bill shows that on August 20, 1937 they furnished and erected a pair of skat. doors, whatever that may mean.

A. I can't tell for certainty, but it may be they rendered those doors—possibly the invoice was rendered and the doors not shipped right away.

Q. Well, now, this bill was paid August 25th?

A. Yes.

Q. That is marked on there, is that correct?

A. That is right, it was paid. August 25th. I didn't say definitely—

Q. Then you wouldn't have paid the bill unless it was actually there and installed?

A. Well, the only thing I can state, I can identify those invoices as being the cost of replacing the doors, the new doors.

Q. Well, is there any doubt in your mind that this one hundred and eighty-six-dollar bill which includes, incidentally, a charge of twenty-six dollars extra for finishing, painting and graining,—

A. I know about that.

Q. Yes.

A. Our previous door was finished in oak, and the door came through with the prime coat on it, and it had to be finished the same as—as the molding was, part of the molding, and same as we had had it before. We were trying to replace the things as they were before May 6th, and we replaced the door and had it grained the same as it was before.

Q. Well, there is no doubt in your mind that when that door was put in and completed, and you paid for it, the door was in?

A. Right.

Q. And if there was any bill rendered subsequently, more specifically on September 28, 1927, and paid on October 6th, it could not have referred to the trimming or anything on the front door?

A. Well, I would have to refresh my memory about this, this part of the bill, but I am certain that this was all—I am quite certain that this was all part of the front door equipment.

Q. You still think that this is part of the front door equipment, and you paid twice for it?

A. As far as I can recall. It has been two years ago. I can't remember everything from that date.

Q. There is no doubt the door was installed at one and the same time, and was paid for?

A. Well, it seems—it seems to me that there was another door, too, damaged, inside the plant. I won't say for certain, but I could check that.

Q. Now, what did you have to do with this particular item of damage?

A. I ordered the door.

Q. You ordered the door?

A. Yes.

Q. And that is all you know about it?

A. Yes, other than that I ordered it and saw that.

Q. Saw that it was paid?

A. That it was installed, and that the bill was paid.

Q. Now, you have here repairs to time recording system. What do you know about these repairs?

A. I had those repairs made.

Q. When you say you had them made, did you order the making of these repairs?

A. I ordered the repairs, yes.

Q. Or were you simply told to pay for them?

A. I negotiated with the company to repair the time recording.

Q. And these negotiations were carried on when, do you remember?

A. I don't remember the dates.

Q. I mean, I will give you the bill.

A. Yes.

Q. This might refresh your memory.

(A bill was shown to the witness.)

A. Negotiations took place, of course, before the invoices.

BY MR. SIMONS:

Q. Well, that is why I am asking you

A. They got in and developed an estimate of the repairs to the machines to the clocks, and so forth.

and then there was an estimate, and rendered these bills.

Q. Well, now, give me an approximate idea as to when you first negotiated with regard to the repairs to the equipment, to that particular equipment.

A. Shortly after we got into the plant.

Q. Some time—

A. After July 20th.

Q. That would be some time in August?

A. Yes, the early part of August, yes, that would be correct.

Q. Now, the earliest bill you have is on August 25th?

A. That is right.

Q. And how long before that would you say that you negotiated with them?

A. Well, I—I got in touch with them before we even got back in the plant, to get the things set, so that when we did get possession of the plant that they could make that estimate and make the repairs.

Q. Well, how long before August 25th did you negotiate in this matter?

A. Oh, I would say at least several weeks before that.

Q. Several weeks?

A. Yes.

Q. When these repairs were made was there any change made in the type of system that you had there?

A. I would say not. I believe that it was the same.

Q. Well, are you certain of that, or are you just assuming?

A. I am not absolutely certain of that.

Q. In other words, they may have made some

changes in the system while you were making the necessary repairs?

A. I don't think so.

Q. Now,—

A. Unless—unless we had a—there may be some little difference, the clock was a little different from ours, it may have been the next year model or something of that sort, I don't know.

Q. Now, how long had this time recording system been in operation in your plant, do you know?

A. At different intervals. In one plant it would have been in, judging from when we erected the building,—

Q. From the time—

A. —about 1927, '28, somewhere around there.

Q. Therefore, at the time of this occurrence it had been there at least ten years?

A. Well, not at least ten years, say around—

Q. Well, some of them had been there for ten years, I mean, over a period of ten years.

A. As far as my recollection, I am only basing that on if we put the clocks in there when we built the plant. It may be we installed them later. That I couldn't state at this time, without consulting our original invoices.

Q. A great deal of expense on this was cleaning, oiling and adjustment of movements.

A. I think you will find there had to be replacement of some of the movements.

Q. And some of them are installing necessary parts.

A. Yes, they had their man come on the premises to do some of the work, to get some of the clocks in order, so we would be in position to at least have our employees ring in and ring out on some of the

clocks. Some had to go away, be sent away, and others had to be replaced.

Q. Now, you have a bill here, style number 4577, two power unit, twenty-four volts, d. c. Is that a new piece of equipment that you put in there?

(The bill was shown to the witness.)

A. What do you mean, new, it wasn't a replacement of something?

BY MR. SIMONS:

Q. Yes.

A. Of the same thing? That is new because that is the only thing available to put back.

Q. That is new?

A. Yes, that is new, but it was replacement of the damaged box that was in there, and damaged.

Q. Now, did you spend any money in repairing, oiling, adjusting or cleaning these machines at any other time?

A. They were kept in repair, yes.

Q. And do you have a record to show the cost of your repairs on these matters?

A. I do not.

Q. Well, weren't they part of the expenses that were deducted as part of your operating expenses?

A. Well, we don't keep that separate, the oiling of time clocks.

Q. Well, I mean the oiling and cleaning and adjusting of them.

A. No, we have a regular system for taking care of all our machinery. They are periodically oiled and cleaned, and so forth, motors and everything else.

Q. Did this company ever do any work on these machines?

A. What is that?

Q. Did this International Business Machines Corporation do any work on these clocks at any time?

A. Oh, they may have made minor repairs, if something went wrong, I couldn't say that, over a period of years.

Q. There were occasions when you had to make these minor repairs?

A. I say, I am not certain.

Q. Did you carry these clocks as an asset?

A. That I couldn't say. They certainly were an asset.

Q. Did you allow any depreciation on these clocks?

A. Oh, yes.

Q. Will your records indicate that?

A. I don't know whether we carried those separate clocks in a separate item. They went into fixtures, I should imagine.

Q. Well, will you look at your records and let me know?

A. I couldn't tell by my records here today.

Q. You couldn't?

A. No, not that they were actually put in as a separate—in fact, I am certain they wasn't put in separately.

Q. Were they grouped?

A. —although they may be in our plant ledger.

Q. Do you have your plant ledger here?

A. The plant ledger is here.

Q. May we have the plant ledger?

(The witness produced the ledger.)

BY MR. SIMONS:

Q. Will you see if you can find it here.

(The witness examined the ledger.)

A. It would appear that it was carried under fixtures, and not segregated.

BY MR. SIMONS:

Q. Now, that would be in your fixture account?

A. Yes.

Q. Do you have your general ledger here?

A. General ledger is there.

Q. Would it show in your general ledger?

A. It wouldn't show in the general ledger as an individual item, because the postings in the general ledger are from the disbursement book.

Q. Well, your assets appear in your general ledger, and under Furniture and Fixtures you would have some notation as to when they were purchased,—

A. Not this particular machine.

Q. — when it was paid for?

A. It would be posted from the—from the disbursement book as a complete total at the end of the month in which they were purchased.

Q. Well, wouldn't you mark in the ledger just what the item was for?

A. Not necessarily.

Q. Well, can we see your general ledger, look at it?

A. Yes.

Q. And then we won't have to guess at it.

A. It is right here.

MR. HIRSCH:

Pick it out, Mr. Steeple.

A. It is the top book, again — no, this one, this side. This is '37. Do you want that?

MR. SIMONS:

Yes, yes, I want to check that account.

THE WITNESS:

I am certain that this ledger will not show time clocks purchased a certain date, at so much money, because it would appear—

MR. SIMONS:

Well, let's see the account and then we won't have to guess at it. That is the easiest way.

(The witness examined the ledger.)

MR. SIMONS:

Let me look at it.

THE WITNESS:

Wait a minute.

(Discussion off the record.)

MR. SIMONS:

Well, let it just be noted that the ledger, general ledger, only goes back to 1931, and Mr. Steeple says he didn't bring all his records here, and it doesn't appear as a separate item.

MR. HIRSCH:

You want the books ahead of '31?

THE WITNESS:

That information can be secured if it is essential, if it is required.

MR. HIRSCH:

I object to anything preceding 1931. I think that is a little irrelevant.

MR. SIMONS:

I feel we have the right to check on the ques-

tion of the value of it, and I may want to see what the actual cost of those time clocks was.

THE COURT:

See if you can do that.

MR. SIMONS:

Now, in order to be accurate about it, I will ask that you obtain it for me.

MR. HIRSCH:

Mr. Steeple, will you do that, please?

MR. SIMONS:

Mr. Steeple says he can get it. I would like to have it.

THE WITNESS:

I should imagine I could get it.

MR. HIRSCH:

You are entitled to it, then. Go ahead.

BY MR. SIMONS:

Q. How do you figure your depreciation on this? I can't figure fast enough here.

A. What do you mean, how do we figure?

Q. What percentage do you figure depreciation per year?

A. On fixtures?

Q. Yes.

A. About five per cent—our accountant will be able to testify to that more clearly than I am.

Q. You figure depreciation at least five per cent?

A. Yes.

Q. And that, of course, is deducted each year as you go along, at the end of the year?

A. That is true.

Q. From the value of the particular asset as set up here?

A. That is true.

Q. And if any of these items were ten years old, why, then they have depreciated at least according to your records in their value at least fifty per cent.

MR. HIRSCH:

That is objected to if you add "their value". I have no objection to the question as to the records. In other words, as a matter of bookkeeping they may have depreciated five per cent, or three, or ten. That doesn't determine whether they have any value, necessarily. They may be less valuable or more valuable.

BY MR. SIMONS:

Q. Now, you have another bill here for $1,266.75, which is also for new time clocks and new material that you bought, is that correct?

(The bill was shown to the witness.)

A. They weren't new. They were replacements.

Q. Well, they were new items?

A. Well, they had to be. The others were damaged.

Q. Yes.

A. Beyond repairs.

Q. Well, you don't know that?

A. I do know that.

Q. How do you know that?

A. I saw the clocks.

Q. Do you know anything about the clocks?

A. I saw the clocks.

Q. Do you know anything about clocks?

A. I am not a clock maker, but I can see—

Q. All you knew is what you have been told?

MR. HIRSCH:

Let him finish his answer.

A. (Continued) All I know is what I see, and I saw the master clock completely demolished in the office, and the other clocks, too.

BY MR. SIMONS:

Q. And all you know is that you asked this company, the International Business Machines Corporation, to repair them?

A. If it was possible to repair them.

Q. And they told you to buy the new clocks?

A. Absolutely, said it was beyond repair.

Q. And you have no estimate for the repairs of those machines, do you?

A. I don't know, offhand. I think that—I think I have.

Q. Do you have that here?

A. I don't think they are here, no.

MR. SIMONS:

I ask that these be marked for identification.

(Folder relating to repairs to time recording system was marked Exhibit D-6 for identification.)

BY MR. SIMONS:

Q. You have a file here, repairs and replacements to fixtures, $3,500.00. Can you tell us what this is about?

A. This was the labor, our own labor, that was—labor cost in repairing—

Q. Well, now, all you have here is just a piece of yellow paper with some notations on it in red pencil?

A. That is right.

Q. That is all?

A. That can be supported by the—

Q. Well, now, that is what I want to know. What can it be supported by?

A. It can be supported by reports and the wage book in which we paid our employees these wages while we were making these repairs.

Q. Let's see them.

BY MR. HIRSCH:

Q. Now, what book do you want?

A. What?

Q. Which one do you want?

A. I don't know, now.

Q. Well, go ahead, look over here.

MR. HIRSCH:

Does Your Honor object to Mr. Langer, the certified public accountant who worked with Mr. Steeple, helping him get this information?

MR. SIMONS:

Oh, yes, if Your Honor please, I feel here the man is testifying. Here the items of damage are most important.

MR. HIRSCH:

All right.

MR. SIMONS:

I don't think anyone else should do that.

MR. HIRSCH:

I withdraw the suggestion of having it expedited. I wanted to help, that is all.

You can stand there and testify.

THE WITNESS:

I would have to ask the accountant's support on this, because he has the schedule, and I don't have it in here. I can't testify from this here.

MR. HIRSCH:

I don't know what you mean. He has a schedule in addition to that?

THE WITNESS:

Yes, on this—on this here claim it should be understood that my duties at the office would not permit me to put my whole time in on keeping these records, and, therefore, the accountants was employed to do that. I will be glad to testify all that I can to my knowledge, but the accountants are in a better position on these items of this nature to testify.

BY MR. SIMONS:

Q. Therefore, you personally know nothing about—

A. And will be able to do it more quickly than I can.

Q. All right, you personally know nothing about—

A. More completely—

Q. You personally know nothing about that item?

A. —than anybody here. I know about it, but I can't give the detailed figures.

Q. You have no personal knowledge or anything about it?

A. No, I do have personal knowledge about it, but I can't give you the details.

Q. You can't support this item in any way?

A. The accountants can. I can't support it other than tell you what it was for.

MR. SIMONS:

Mark that for identification.

(Folder relating to repairs and replacements of fixtures was marked Exhibit D-7 for identification).

THE COURT:

Well, it may be that we will make better time if we adjourn at this point, and let you go over this so that you will be ready tomorrow morning to go ahead with a little more expedition. Suppose we adjourn. I might see counsel for just a few minutes in chambers, if they will come in.

Adjourned until ten o'clock tomorrow morning.

Adjourned until Thursday, March 16, 1939, at ten o'clock A. M.

Philadelphia, Pa., March 16, 1939

Fourth Day

Plaintiff's Evidence (Continued)

(MR. HIRSCH:

It is stipulated and agreed that the particular persons who did the work or contributed the labor or supplied the materials for the items of damage complained of, if called on the stand would testify that the charges for their material, labor or supplies were fair and reasonable market value.)

MR. HIRSCH:

May we see you at side bar for a minute?

THE COURT:

Yes.

MILTON S. STEEPLE, recalled.

Redirect Examination

BY MR. HIRSCH:

Q. Mr. Steeple, after we adjourned court yesterday and at my request did you take all of the various categories or items of damage for which you have separate files, for which you had separate files in court, and pick out those items over which you had direct contact and supervision during the course

of their repairs, and can testify to the nature of the repairs,—

A. I did.

Q. —from those over which someone else in your organization had the supervision of the repairs? You did separate them?

A. Separated those both.

Q. Now, will you tell us, have you retained in your lap the files over which you had this direct supervision of repairs?

A. I have.

Q. Just read us off the names of the items which you can actually cover as to those repairs.

A. Repairs and miscellaneous replacements to office equipment.

Q. Keep your voice up.

A. Repairs to desks, typewriters, adding machines. Repairs and replacements to sealing machine. Repairs to label pasting machine. Repairs to multigraph equipment. Repairs and replacements to stenciling machine. Inventory shortage. Damaged silk. Silk and yarn waste damaged on machines. Labor cost of sorting wareroom merchandise. Damaged hosiery. That is all.

Q. Now, as to all other items someone else will testify?

A. Yes.

Q. However, all of the items, both those which you supervised, those which you supervised as to repairs and replacements, and those which you did not, passed through you for payment?

A. That is true.

MR. HIRSCH:

All right, now, you may cross examine.

Recross Examination

BY MR. SIMONS:

Q. And as far as all the other items that you haven't read today you know nothing about them except that they were paid through you?

A. Yes.

Q. Do you have those which you marked for identification yesterday?

MR. HIRSCH:

They are all here. You better pick them out.

MR. SIMONS:

No, I just wanted to separate them, so the stenographer will be able to identify them, that is all.

MR. HIRSCH:

There they are.

MR. SIMONS:

All right, better leave these here for the moment. I don't want to take the time.

MR. HIRSCH:

All right.

BY MR. SIMONS:

Q. Now, referring particularly to the matter of repairs and miscellaneous replacements of office equipment, you have an item there of four shades. What was that for?

A. Can I see the bill, please?

Q. Oh, surely, I am sorry. That is the top bill that I am referring to.

A. What?

Q. The top bill that I am referring to.

A. Yes. That particular item I am not quite certain of. The other item I am, that makes up this group.

Q. What is the other item? I didn't see it.

A. The other item is the cleaning of the rug in Mr. Struve's office that was damaged by the—

Q. Now, wait,—

A. —ink—

Q. —cleaning; were you in Mr. Struve's office on the 6th of May?

A. What time?

Q. After—

A. After the—

Q. —the crowd broke it?

A. No, I was not.

Q. You don't know what the condition of the rug was on the 6th of May?

A. No. I know the condition of the rug on the 7th of May, though.

Q. Were you there on the 7th of May?

A. I was, all day.

Q. And were you in Mr. Struve's office that day?

A. I was.

Q. Was it then that you noticed—

A. Yes.

Q. —that it was marked up? You didn't see it on the 6th?

A. The ink was still on the rug. It couldn't be gotten out.

Q. And there was a charge of $19.54?

A. Yes.

Q. Now, the four shades for $5.40, you don't

A. I can't quite tell,—

Q. recall.

A. —identify that small item.

Q. Now, you have here another item, Fidelity Felt Company, for $16.00. Do you know what that is about?

A. Let me see it.

(The bill was shown to the witness.)

A. (Continued) Yes, they were the felts, the green felts that were under the glass top tables that were damaged.

BY MR. SIMONS:

Q. You mean the felts under the glass?

A. That is right, green felt.

Q. Now, there were ten yards, seventy-two inches wide of a green felt?

A. That was cut to fit the size of the table, the particular table.

MR. HIRSCH:

Keep your voice up, please.

A. (Continued) They were cut to fit the particular table that—

BY MR. SIMONS:

Q. You mean you had an entire green felt on the table, and glass on top?

A. Underneath, that is right.

Q. Under the whole glass?

A. To prevent the glare of the glass.

Q. What kind of a table was this?

A. I believe that was Mr. Struve's—the table in Mr. Struve's office.

Q. Well, now, do you know what table, then?

A. Not exactly.

Q. I don't want to guess at these things.

A. Not exactly, no, not exactly which table they were, whether it was one or two, and that was cut for two, I think. I didn't keep any exact records, but—

Q. When you talk about a table, you aren't referring to a desk?

A. Well, it is a table, a long table in Mr. Struve's office, and there were desks where the glass was—

Q. Was it a desk? Was it used as a desk?

A. Yes, as a desk.

Q. And the 72—

A. Not exactly a desk; it is in back of the desk. It is a long table such as would be in a board of directors' room, and so forth.

Q. Yes, and you say the seventy-two-inch wide felt was for the entire table?

A. Yes, that is my recollection.

Q. Well, isn't it a rule, or isn't it customary that whenever you have a glass top the felt is just around the edge—

A. No.

Q. —of the glass?

A. Oh, no. No, that felt is put on there. If the glass is clear it throws a glare when you are working on it. We have some of our desks still equipped that way.

Q. And you aren't certain whether that is in Mr. Struve's office or not?

A. Not exactly, no.

Q. Do you have any other such tables around?

A. Yes, we do.

Q. Where?

A. In the office, and there are glass top tables where there is felt underneath.

MR. HIRSCH:

Mr. Steeple, you are so confidential with Mr. Simons I am afraid these people can't hear you.

THE WITNESS:

I am sorry, I will try to—

BY MR. SIMONS:

Q. Now, did you see that particular table—well, you don't know which table it was, so you can't tell us the condition it was in on May 6th?

A. I can't remember exactly every table that was broken, or every table top that was broken.

Q. And you don't know what, if anything, happened to the green felt that was on there on May 6th?

A. No, I don't.

MR. SIMONS:

Mark this the next number for identification.

(Folder relating to repairs and miscellaneous replacements to office equipment was marked Exhibit D-8 for identification.)

BY MR. SIMONS:

Q. Referring now to the items of repairs to desks, typewriters, adding machines, et cetera, you have one item of office furniture and fixtures, Pittsburgh Plate Glass, $47.77, and you have: see—I can't read it. Is that an item that was included in the glazing account?

A. No, that would be in a separate folder. That would be in a separate item.

Q. There is no other identification of that item in this folder, although it does—that item of $47.77 does go to make up your total that you have?

A. That—I won't—I will change that. That may be in there, I won't say for certain, that may be in this here, this other item here, you see, mill fixtures, furniture and fixtures.

Q. In other words, it is your thought that that may be included—

A. That may be.

Q. —in some other item?

A. That may be.

Q. So this item of $1,561.76 we will have to deduct from that $47.77?

A. I wouldn't say. It would have to be checked up further.

Q. Oh.

A. I wouldn't say immediately.

Q. Well, where would it be, in the glazing item?

A. I should imagine Pittsburgh Plate Glass.

(Another folder was shown to the witness.)

BY MR. SIMONS:

Q. Do you know whether that $47.77 is one item or a number of items?

A. I should imagine it would be one item, part of one bill.

Q. Is it possible that that may have been included in some of the total items of the Pittsburgh Plate Glass?

A. It wouldn't—if it was in here it would have been deducted out of there and put in here (indicating).

Q. Although—

A. In setting up—

Q. —your computation of all the bills—

A. In setting up the claim.

Q. The computation of all of the bills which

you have in that folder is correct, in other words, I mean, the totals that you have taken, the grand totals of that folder?

A. Yes.

Q. And that is the total you have given us for that particular file of glazing?

A. That is right.

Q. And there has been no deduction of $47.77?

A. That I couldn't say without checking, going into it.

BY MR. HIRSCH:

Q. Well, have you claimed it twice? That is what Mr. Simons wants to know.

A. No.

BY MR. SIMONS:

Q. Although if it is a matter of the Pittsburgh Plate Glass this is the only place where you have those bills?

A. Correct.

Q. And it may have been included in all of these bills, but actually belong to some of the office fixtures or one of the desks, or something of that kind?

A. Yes, but it isn't included—it wouldn't be included a second time. It wouldn't be included in the glazing and in this here group here.

Q. Well, then, if it is to be included at all it would be in the glazing?

A. I should imagine.

Q. And in view that you have nothing here to identify it, we will have to deduct $47.77 from this total?

A. If necessary, that is true.

Q. All right. Now, I show you an item here of the Keystone Index Card Company, one 8 by 5, 66, oak. Will you tell us what that is, an item for $88.00, less a discount, a net item of $61.60?

A. That is a new desk.

Q. And that new desk was for what part of the factory or office?

A. The new desk was for—at the telephone exchange, which was completely demolished.

Q. Well,—

A. And had to be replaced.

Q. Well, when you say completely demolished, you know nothing about office furniture?

A. No, but I had an estimate made of all the office—

Q. Well, now, wait a second, do you have the estimate here?

A. I do.

Q. Where is that item?

THE COURT:

What is the amount of this item?

MR. SIMONS:

Sixty-six dollars.

THE WITNESS:

$61.60.

MR. SIMONS:

That is the net amount, yes.

BY MR. HIRSCH:

Q. Well, now, what is all of this?

A. That is the estimate that was made. You will find there is a letter there, I believe in the back,

where it covered this particular desk, where they say—

MR. HIRSCH:

Mr. Steeple, everyone here wants to hear you.

THE WITNESS:

Very well.

MR. HIRSCH:

They are trying the case, not Mr. Simons. Please keep your voice up.

THE WITNESS:

There is a letter there in the back there where it indicates this desk was demolished to the point where it could not be repaired.

BY MR. SIMONS:

Q. Now, is there any way I could identify this desk by looking through this letter?

A. By that letter, that is in there.

Q. All right, excuse me a minute.

MR. SIMONS:

If Your Honor please, just to get ourselves straight, now, for the purposes of the record, there was an offer made of all of the books and papers and records and everything else, offered in evidence. I assume that their acceptance into evidence doesn't give them any evidentiary value or the right to go to the jury, if there are some things in particular that are objectionable. Thus, I am handed this, which is just a self-serving declaration—

THE COURT:
Well, I—

MR. HIRSCH:
That is understood.

THE COURT:
Yes, I understand the purpose of that offer in evidence was to have them so you could use them for anything you wanted, and they will not be sent to the jury.

MR. HIRSCH:
Correct.

MR. SIMONS:
Right, they will not be considered as evidence unless—

THE COURT:
Well, they are considered as evidence, but both sides stipulate that they won't be sent to the jury except so far as either one of you may select certain ones and offer them. They are evidence for the purpose of giving you the opportunity to use them for any cross examination you want.

BY MR. SIMONS:

Q. Now, it is on the basis of an estimate that you received from someone, or from the Keystone Index Card Company, that you decided to buy a new desk?

A. No, I saw the desk on May—

Q. Yes.

A. May 7th.

Q. And you say you had an estimate presented

to you, or a suggestion presented to you, by the Keystone Index Card Company,—

A. That is correct.

Q. —as a result of which you bought this new desk. Now, can you describe that desk that you claim was damaged?

A. Other than it was an oak desk.

Q. It was a what?

A. An oak desk, to match the other desk in the office.

Q. And how large a desk was it?

A. Well, I—I don't know the exact dimensions.

Q. Well, what kind of a desk was it?

A. It was a wood, oak desk.

Q. Well, was it an ordinary straight top desk?

A. Yes.

Q. Was it a roll top desk?

A. It wasn't a roll top desk.

Q. Was it a typewriter desk?

A. No, it was a straight desk.

Q. Straight desk?

A. Straight, flat top desk.

Q. Straight, flat top desk?

A. That is right.

Q. Did you see any mention made of a straight flat top desk in here?

MR. SIMONS:

Showing him the papers presented—

A. I might state all of the desks in the office—

MR. SIMONS:

Wait a second, just to get the record straight

—showing the papers presented by the witness to me.

A. (Continued) This desk was in the outer office. All desks in that outer office are flat top desks, so any replacement, naturally, would be a flat top desk.

Q. Well, do you mean to say that all the desks in the outer office are the same?

A. Not exactly, no.

Q. Therefore, there were some distinguishing features—

A. This wasn't—

Q. —about this—

A. That is right.

Q. —particular desk?

A. No, just an ordinary desk.

Q. Will you show me where there is anything in there about it?

(The letter was shown to the witness.)

A. The fourth paragraph, here. That has reference to this desk.

BY MR. SIMONS:

Q. And in here they recommend the purchase of a new desk?

A. Yes.

Q. Since the operator requests—reading from this—since the operator requests that a panel be placed at the back of the desk between the two pedestals. This desk was completely pulled apart and the top badly damaged. That is all they say about it in this letter.

MR. HIRSCH:

No, that is not complete. Read the whole paragraph and then you will be accurate.

BY MR. SIMONS:

Q. The side opening typewriter desk at your telephone exchange is badly damaged and we find it advisable to recommend the purchase of a new desk instead of repairing the old one—

MR. HIRSCH:

"So badly damaged", not "badly damaged"; is "so badly damaged".

BY MR. SIMONS:

Q. —is so badly, pardon me; instead of repairing the old one, especially since your operator requests that a panel be placed at the back of the desk between the two pedestals.

In other words, the operator requested some changes to be made in that desk.

A. No, the new desk wasn't purchased on the basis of that. It was purchased on the basis of, it would cost more to repair the desk, it was on the repair—.

Q. Well, you have no estimate here for the repairs of it. This is just a letter of recommendation by a company that is selling furniture.

A. That is included in the estimate.

Q. Where do you have the estimate for that?

A. It is on the top there. I might explain that in these desks there was no—

Q. Now, wait a second, let's find this one thing, so we don't have the record confused any more than necessary.

MR. HIRSCH:

Let him show it to you.

BY MR. SIMONS:

Q. Where is that?

THE COURT:

Well, gentlemen, may I speak to you?

A. My judgment is that this—is that that was included in this estimate—

THE COURT:

Will you come to side bar a minute?

(Discussion at side bar.)

THE COURT:

Members of the jury, counsel and the Court are going to try to work out some means of shortening the testimony, which appears to the Court now to be developing into a very long and elaborate trial. Now, it may be possible that we can get some method of arriving at an issue without going into the details, which apparently really cannot be helped. It is a case in which there is a claim for a very large number of separate items of damage, and it can hardly be avoided, the cross examination on each separate item, that is, unless some arrangement can be made by which we can get away from it, and I think that we can profitably spend about a half an hour in trying to discuss some means of shortening this testimony on the damages, so that we will recess for a half an hour. At ten minutes after eleven you come back.

(Recess at 10:40 o'clock A. M.)

(The jury was then excused until two o'clock.)

After Recess

Present: Counsel as before noted.

Plaintiff's Evidence (Continued)

THE COURT:

Mr. Syme, did you determine whether you would be ready to proceed this afternoon?

MR. SYME:

I am going to put a witness on this afternoon, yes, sir.

THE COURT:

Well, then, I will say to the jury, just so that they will understand the situation, that as this case developed it became apparent that there would be a great deal of very lengthy and complicated testimony on the ~~question of damages~~. That appeared this morning, in that we spent about forty minutes going over a total item of damages amounting to about a hundred dollars. That is not anybody's fault at all, it is the way the case has to be tried, and it cannot be avoided.

After conferring with counsel I came to the conclusion that the only sensible way to proceed would be to suspend the testimony on the matter of damages, not take any more testimony at the present time, until that whole question has

been referred to a Master whom the Court will appoint and who can make a report that I hope will make it unnecessary to take a great deal of testimony before you which would otherwise have to be taken, so that the Court is going to appoint a Master, and I will say that I shall appoint Mr. Bachman, who has already acted as Master in some of the preliminary phases of this case, and refer the whole question of the amount of the various items of damage to him, and we won't hear any more testimony on that point until he has reported. The report will be before you for such use as can properly be made of it.

We will, however, go on with the testimony relating to the single question of the liability of these defendants for whatever may have occurred, the responsibility of the union and the liability of the other parties, and when we are through with that we will have to recess until the Special Master is ready to report on the question of damages, and then we will resume the hearings in the case, but it seemed to me that if we attempt to go through with the whole question of damages as we were starting out to this morning it would be a matter of weeks, and I hope we can all be relieved of some of that time and work spent in that way by the method that the Court has decided to adopt, but we will proceed and hear all the testimony on all the other questions involved in the case except the measure and amount of the various items of damages.

MR. HIRSCH:

May I at this time offer into evidence the depositions of the following parties, which depositions were taken pursuant to the rules of court on December 6th, December 7th and December 8th, 1938? May I read the names?

THE COURT:

Well, the depositions are in the Court's hands sealed at the present time. The application is that they be opened now and received in evidence, is that correct?

MR. HIRSCH:

That is correct,—

THE COURT:

All right.

MR. HIRSCH:

—as to these parties. In other words, I am going to name the parties—

THE COURT:

All right.

MR. HIRSCH:

—whose depositions I ask be received in evidence.

THE COURT:

All right.

MR. HIRSCH:

And without burdening you and the jury listening to my naming them, I will hand a list to the stenographer.

THE COURT:

Very well.

MR. SYME:

That is agreed to, Your Honor.

MR. HIRSCH:

And I would like just to make the general statement that my purpose in doing this, my main purpose, as I have indicated to Your Honor, is to avoid the necessity of calling all of these persons and having them asked the same question and obtaining the same answer from them again, which will take considerable time, because I think there are some thirty-four or thirty-five names; and, furthermore, while I do not intend to read the depositions at this time I ask leave at the proper time, at the conclusion of the case, to read such parts of the depositions as I may think—

THE COURT:

Very well.

MR. HIRSCH:

Yes.

THE COURT:

They will be received and the reading of them will be determined as it becomes necessary.

MR. HIRSCH:

I also offer in evidence in conjunction with these depositions the following exhibits which were the exhibits offered in evidence at the time the depositions were taken, and these are the exhibits, all of which have been duly marked by the stenographer.

THE COURT:

Are these the whole thirty-five represented

here? There are none of them that are not offered?

MR. HIRSCH:

They are all within those. There are other depositions in there but some of those I have covered by oral testimony, and so forth.

THE COURT:

Well, there are some that you do not want to offer?

MR. HIRSCH:

That is correct.

THE COURT:

All right.

MR. HIRSCH:

I am giving the names of those whose depositions I want to offer in evidence.

THE COURT:

They can all be opened, but the ones you do not want can be removed. You advise the Clerk which ones you do not offer so that they can be removed and won't be filed with the others; later on, I mean.

MR. HIRSCH:

All right. I would like them all available, sir.

THE COURT:

Oh, they will be.

MR. HIRSCH:

It is just possible we may want to offer others at a later date,—

THE COURT:

All right.

MR. HIRSCH:

—but only if it becomes necessary by reason of testimony that will be produced by the defendant.

THE COURT:

All right, I understand.

MR. HIRSCH:

Will you make a note that these are with the depositions, as distinguished from the exhibits offered in evidence today? We will have one number for the depositions and these exhibits. That will all be in one bundle.

(The depositions of the following witnesses, together with the exhibits identified in connection with the depositions, were offered in evidence as Exhibit P-18:

Thomas Flynn
Harry Bach
Paul Walton
John Bernhardt
Herbert S. Fahy
Raymond Hallstein
Louis Kenworthy
Peter Kremer
David E. Justice
Herman Freiheit
Edward Kozubel
Carl Kuebler
Paul Lang
Harry Edward Jones
Sesto Lucarini
William Anderson
Martin Pirozek

Howard Carpenter
Francis McDermott
Ernest Del Prete
Alfred Schuh
Louis Drigert
Jake Schulberger
Raymond Evans
Elmer Miller
John Ezzo
William Pawlick
George Flynn
Robert Pawlowski
George Hober
Valentine Razler
Milton Innitski
Walter Razler
Joseph Ryan
William Etter)

MR. HIRSCH:

William Leader I call as for cross examination.

WILLIAM LEADER, having been duly sworn, was examined and testified as follows:

Cross Examination

BY MR. HIRSCH:

Q. Mr. Leader, you are the president of the defendant union?

A. That is right.

Q. And for how many years have you been its president?

A. Since 1934.

Q. And you were president of the union throughout the entire year of 1937?

A. That is right.

Q. Do you recall having discussions with management during the period of the sit-down strike at the Apex plant, in which the question of settlement of the differences between management and the union was discussed?

A. You mean on May 6th?

Q. No, during the period of the sit-down strike.

THE COURT:

After May 6th?

MR. HIRSCH:

After May 6th and before—

THE COURT:

Before June 23rd.

BY MR. HERSCH:

Q. Before June 23rd.

A. On May 7th.

Q. Well, do you recall a discussion approximately a week after May 6th, the one I have in mind, particularly, at the Mayor's office, at which you were present?

A. At the Mayor's office, I do.

Q. And Mr. Harry Sundheim was present?

A. That is right.

Q. And I was present?

A. Right.

Q. Mr. Sundheim and I were the ones who represented the company in that conference, and you were there representing the union, were you not?

A. That is right.

Q. At that time the question of the settlement of the differences was discussed, but no agreement was reached?

A. That is right.

Q. And in that discussion and in all other discussions you were there, you were acting as the president of the union and as its duly authorized representative to negotiate the settlement?

A. In all discussions I attended, that is correct.

Q. And you reported back all discussions to the executive board of your union, did you not?

A. I believe so.

Q. It is a fact, is it not, that after the conference in the Mayor's office indicated that no settlement could be reached because the union demanded a closed shop and nothing less than that, that you were asked by Mr. Sundheim whether or not the management would be permitted by the union and the sit-down strikers to remove finished merchandise which was on the premises of the Apex plant, for the purpose of shipping that against orders which were on hand,—

A. Well, that is—

Q. —and you refused?

A. That is a long question. Would you repeat it again?

MR. HIRSCH:

Repeat it, Mr. Stenographer.

(The question was repeated by the Reporter, as follows:

"Q. It is a fact, is it not, that after the conference in the Mayor's office indicated

that no settlement could be reached because the union demanded a closed shop and nothing less than that, that you were asked by Mr. Sundheim whether or not the management would be permitted by the union and the sit-down strikers to remove finished merchandise which was on the premises of the Apex plant, for the purpose of shipping that against orders which were on hand and you refused?")

MR. SYME:

May I object to that question, Your Honor? That question has a lot of implications in it. If Mr. Hirsch wants to ask those individually, for instance, negotiations, impossibility of reaching an understanding on the negotiations, and assumption that—

THE COURT:

Well, yes, it is a rather complex question.

MR. SYME:

Certainly.

THE COURT:

Why don't you ask him just the question whether Mr. Sundheim asked him a certain thing and what he replied to it? Put it the way you were, except that it is a question that involves three or four things.

BY MR. HIRSCH:

Q. Isn't it a fact that Mr. Sundheim asked you for permission—when I say "you", your union—for permission for the management to remove the finished merchandise which it had on hand on the

premises in order that it could be shipped against orders which it had on hand?

MR. SYME:

Just one minute, Your Honor. I object to the question. If Mr. Hirsch wants to ask Mr. Leader whether he asked him, that is one thing. If he wants to ask Mr. Leader whether he asked his union, that is quite another thing.

THE COURT:

Well, that involves, of course, a conclusion.

MR. SYME:

Exactly.

BY THE COURT:

Q. But did Mr. Sundheim ask you whether you—either you or the union—would permit the company to remove finished merchandise so that they could ship it against orders on hand? That is really what the question calls for.

A. Your Honor, Mr. Sundheim asked me, would I permit the merchandise in the Apex building to be removed. My answer to him was that at no time had I anything to do with removing merchandise from anywhere.

Q. Now, wait.

BY MR. HIRSCH:

Q. As a matter of fact, wasn't your answer that nothing could be removed unless you got a closed shop agreement?

A. I just stated my answer.

Q. Now, do you recall a conference that took place in our office, at which you and Mr. Herbert

Syme, your attorney here, Mr. Sundheim and I were present, which followed the conference in the Mayor's office?

A. I believe so.

Q. And if I may bring that conference back to your mind, we met in Mr. Sundheim's office and we discussed the question of settlement along the lines of the Reading agreement, and we finally were unable to agree on that. Do you recall that conference?

A. We negotiated, that is correct.

Q. And do you recall at that time my statement to you, that is, the management should be permitted to remove all of its finished merchandise against orders which it had on hand from customers all over the country, because of the seasonal nature, for one thing, the possibility of cancellation of the business, for another, and the fact that the labor which went into those orders had been paid for and it was only fair that we should be put in a position of being able to deliver and get our money for the goods? Do you recall that?

MR. SYME:

Your Honor, I object to this form of questioning that Mr. Hirsch is adopting. He is delivering speeches here, he isn't asking a question.

THE COURT:

No, I think that is all right. This is a different thing. Mr. Hirsch is summarizing a statement that he says or suggests that he made to Mr. Leader, and he is asking Mr. Leader whether he remembers that or whether he does not, or whether he agrees that it was made, or not. I

think that question is a different thing. It does not involve a lot of conclusions.

BY THE COURT:

Q. Do you remember any statement of Mr. Hirsch's to the effect that he has just asked?

MR. SYME:

Your Honor, the difficulty with a question like this is, if the witness says, "Yes" to one of these statements, and one of them happens to be—

THE COURT:

Oh, well, I won't hold—

MR. SYME:

—an admission—

THE COURT:

The witness won't be held to a "yes" or "no" answer. If that calls anything to your mind as to what Mr. Hirsch said you can state what it was.

A. Yes, well, Your Honor, on that I appreciate the opportunity to answer the way it is asked. I can recall Mr. Hirsch summing up the question to that extent and several other times in the same manner, and the answer was always the same, which was correct, that at no time did I have anything to do with moving of merchandise from anywhere, and I never thought it was a fair question.

BY MR. HIRSCH:

Q. Now, as a matter of fact, when I asked you

that question your answer to it was, "War is war, and until the union gets a—

MR. SYME:
Now, Your Honor, I object to that.

MR. HIRSCH:
I am asking the question.

MR. SYME:
I have tried to cooperate with Mr. Hirsch on this, and if Mr. Hirsch wants to testify to this—

MR. HIRSCH:
This is proper cross examination.

MR. SYME:
—he will have to testify.

THE COURT:
Well, it is just a way of putting the question.

MR. SYME:
Exactly.

THE COURT:
He is asking Mr. Leader—Mr. Leader is on cross examination, and he is asking him whether he said what he is now stating. Now, if Mr. Leader says "No", that is that. If he says, "Yes," why, that is also evidence. He may qualify it. I don't know what he is going to answer.

MR. HIRSCH:
What did I say, Mr. Rodebaugh?

(The question was repeated by the Reporter, as follows:

"Q. Now, as a matter of fact, when I asked you that question your answer to it was, 'War is war, and until the union gets a—")

BY MR. HIRSCH:

Q. —a closed shop agreement not one pair of hosiery will be removed from that property against any orders you may have." Do you recall saying that?

A. At no time did I ever mention war with strikes, and at no time did I ever tell you that hosiery would not be permitted to go from the Apex factory if it was in there.

Q. That is your answer?

A. That is the answer.

Q. And isn't it a fact that when you did answer as you did I tried to convince you that you were not cooperating by telling you at that time that this strike would be settled some day and that if we were permitted to remove our finished merchandise against the orders which we had on hand and ship it, we would then have that much more money with which to operate after the strike was settled?

MR. SYME:

Your Honor, again I object to that.

BY MR. HIRSCH:

Q. Did I or did I not say that?

THE COURT:

Well, I don't see anything objectionable about that. Mr. Hirsch is asking the witness a question.

MR. SYME:

Mr. Hirsch can break up his question into a number of questions,—

THE COURT:

No, I don't think—

MR. SYME:

—instead of delivering these long, cumbersome questions, Your Honor.

THE COURT:

No, I think it is all right, Mr. Syme. I will overrule the objection to that question.

A. My answer to that question is that you made the statement then that you hoped the strike would be settled, and so did I.

BY MR. HIRSCH:

Q. Is that your complete answer?

A. That is a complete answer.

Q. And subsequent to that time you were again requested by Mr. Sundheim and by me for permission to remove finished merchandise on the property during the pendency of our negotiations for settlement and during the time this sit-down strike was in progress, weren't you?

A. And at all times the same answer was there.

MR. HIRSCH:

That is all.

THE COURT:

Have you any questions?

MR. SYME:

No questions—

THE COURT:
All right.

MR. SYME:
—at this time, Your Honor.

THE COURT:
That is all.

MR. HIRSCH:
Now, may I see Your Honor at side bar?

THE COURT:
Yes, sir.

(Discussion at side bar.)

MR. HIRSCH:
I would like the record to note that my taking the stand will be necessitated by the absence of Mr. Harry Sundheim, who has been sick for the last year or more and is still away and unable for physical reasons to attend this trial,—

THE COURT:
All right.

MR. HIRSCH:
—he being the only other person present at those conferences in addition to myself.

THE COURT:
The only other person on your side.

MR. HIRSCH:
On our side, that is right.

SYLVAN HIRSCH, having been duly sworn, was examined and testified as follows:

Direct Examination

THE WITNESS:

Without question and answer, Judge, may I just make a statement,—

THE COURT:

Yes.

THE WITNESS:

—as testimony?

THE COURT:

Yes, surely, as testimony.

THE WITNESS:

During the pendency of the sit-down strike Mr. Sundheim and I were counsel for the company and we had conferences in the Mayor's office and in our office with Mr. Syme and Mr. Leader as the representatives of the union. I recall very distinctly that in the first conference at the Mayor's office, which took place some time after May 10th, 1937, a day or two, if I recall—I don't have the date in my mind; I have the meeting very vividly in my mind—after the negotiations which we were conducting looking to a settlement of our controversy fell through Mr. Sundheim then turned to Mr. Leader, in the presence of everyone, and said, as I recall his statement, to the best of my ability, "Irrespective of whether or not we settle this thing today, we have orders on hand from customers all over the country which we can fill

with merchandise which we have on hand at the plant. Will you permit us to go into the plant for the sole purpose of removing that finished merchandise so that we can ship it against orders?"

Mr. Leader's emphatic answer was, "No, not until this strike is settled."

Mr. Sundheim then asked, "Well, will you permit us to send in fixers to keep the machinery in repair during the period of the strike so that it won't deteriorate?", and Mr. Leader's answer was, "No".

Some few days later another meeting was held in our office. At that time Mr. Sundheim was present, Mr. Leader, Mr. Syme and myself. At that meeting we discussed the question whether we could get together on the basis of the Reading agreement, which was an open shop agreement, and we detailed the various elements of that agreement, and indicated in our conference wherein not only would we meet those various provisions, but better them—

THE COURT:

I don't think the details of the conference are relevant, Mr. Hirsch.

THE WITNESS:

All right, I think so.

THE COURT:

It is just a question—

THE WITNESS:

I am trying to fix the time—

THE COURT:

Very well.

THE WITNESS:

—for this subsequent conversation. No agreement was reached. At that time I turned to Mr. Leader and I said, "Irrespective of whether there is an agreement reached or not, we have orders on hand from our customers and we have finished merchandise on hand." I said, "We have paid for that finished merchandise. We paid the labor for it, and we certainly ought to be permitted by you to remove that finished merchandise in order that it can be shipped against these orders which we have on hand." I said, "In so doing we will then be put in funds because the orders, the finished merchandise on hand, is worth in excess of six hundred thousand dollars. This strike will be settled some day. We can't have a strike forever. Some day we are going to get together on some basis and settle this strike." I said, "Isn't it to your interest and the interest of your union that when this strike is settled we won't be financially crippled as a result of it but will be in a position to operate again so that all of the employees can go back to work and we can continue our operations? It will be to the advantage of everybody if we are permitted to remove this finished merchandise and ship it against orders we have on hand."

And Mr. Leader's reply was, "War is war, and we won't let you remove one dozen pair of hosiery against any order until you give us a closed shop agreement."

Some further time passed, and the last meeting that we had looking to negotiations for settlement, preceding the institution of legal proceedings, was in the Mayor's office, and once again the request was made for the removal of the merchandise for the same reason, and once again the request was refused by Mr. Leader. At that meeting we again requested leave to send in fixers for the machinery, and again that request was refused.

There are a number of other items as to which I could testify, but I am forced to take the stand by reason of Mr. Leader's answers to my questions and the absence of Mr. Sundheim.

That is all I have to say.

MR. SYME:

Your Honor, I want to state here for the record that nobody compels Mr. Hirsch to talk. Mr. Leader gave the version of the story as he remembered it, just as Mr. Hirsch apparently is giving the story with the version as he remembers it. Mr. Leader is as much entitled to his recollection of the story as Mr. Hirsch is—no compulsion, nobody compels him to take the stand.

THE COURT:

Well, Mr. Hirsch didn't mean he was ordered to take the stand, he meant that he felt it was necessary to present his side of the case properly to take the stand.

THE WITNESS:

In the interests of my client,—

THE COURT:
Surely.

THE WITNESS:
—with Mr. Sundheim away sick.

MR. SYME:
Well, even that is unnecessary, I mean, if it has to be stated for the record, because we told Mr. Hirsch that if he did not want to take the stand we would consider admitting Mr. Sundheim's testimony—

THE COURT:
Very well, gentlemen,—

MR. SYME:
—from the preceding case.

THE COURT:
—I understand the situation. Is that all? Have you any questions?

MR. SYME:
Yes.

THE COURT:
All right.

Cross Examination

BY MR. SYME:

Q. Mr. Hirsch, you have testified to the fact that the last conference preceding the institution of legal proceedings occurred in the Mayor's office, is that right?

A. As I recall it, yes.

Q. Isn't it a fact that there was a conference subsequent to that in Washington, and that on the way

back from Washington Mr. Leader was served with the bill in equity on the train?

A. I meant the last conference which I attended. I didn't attend any conference—

Q. Oh, I see.

A. —in Washington.

Q. As a matter of fact, there was another conference in Washington, and that immediately subsequent to that conference the legal proceedings were instituted, you know that?

A. Neither Mr. Sundheim or I were there.

Q. Well, Mr. Hirsch, in these negotiations most of the talking was done between Mr. Sundheim and Mr. Leader, isn't that right?

A. You mean did he talk more than I did in the negotiations?

Q. No, I mean, Mr. Sundheim conducted the negotiations, rather than you?

A. He was the—

Q. That is right.

A. —principal, rather than I.

Q. That is right. During this conference in the Mayor's office do you remember who was present?

A. The Mayor, you, Mr. Leader, Mr. Sundheim, myself. You are talking about the first conference in the Mayor's office?

Q. No, the conference at which Mr. Sundheim is supposed to have asked Mr. Leader so vividly for permission to remove the merchandise.

A. That was the first conference in the Mayor's office.

Q. And who was present, again?

A. The persons I have named.

Q. What time did the conference convene?

A. If I recall, it was convened late in the after-

noon. We had previously seen the Mayor, earlier in the afternoon. He phoned you, if my recollection serves me correctly, and asked you to have Mr. Leader down there, and then he phoned us late in the afternoon and we all went over.

Q. You are sure that I was at that conference?

A. As I recollect, yes. I am sure that it was through you that the conference was arranged.

Q. Well, now, that is not what I asked you.

A. All right.

Q. You told me—

A. I so recollect.

Q. —you were very definite I was present at the conference.

A. That is right, as I recollect you were there.

Q. Let me refresh your memory. I read from the notes of testimony of the statement of Mr. Sundheim in the injunction case:

> "I think that was on Wednesday, May 1st I saw the Mayor at his office on the following day about 2:30. There were present the Mayor, the City Solicitor, Mr. Sharfsin, Mr. Hirsch, and myself. I went over"—this is Mr. Sundheim testifying—"I went over the entire situation with the Mayor. I told him what had happened to the Apex on May 1st".—apparently what he meant was May 6th?

A. Those dates are wrong.

Q. "* * * He knew, himself, what happened to the Apex."

Do you remember Mr. Sharfsin's presence there?

A. Not when Mr. Leader was there. He may have come in and gone out. Mr. Sharfsin was there in the first conference with the Mayor when neither

you nor Mr. Leader were there. I remember that. Whether he came in and went out of our conference when Mr. Leader was there I don't recall.

Q. Do you remember Mr. Frankel there?

A. Not at the first meeting, no. Mr. Frankel was at the last meeting at the Mayor's office when in addition to our problem there was the problem of Arteraft discussed.

Q. And was I there at the last conference?

A. You were.

Q. I was there when you discussed the thing with Mr. Leader?

A. You were there when Mr. Sundheim asked him for leave to remove the merchandise. You were also there when Mr. Sundheim—well, I won't go into that, I mean, that is in addition.

Q. Let me again refresh your memory. On page 154 of the notes of testimony:

> "I don't think Mr. Syme was in that conference, I think it was Mr. Leader, the Mayor, Mr. Sharfsin, Mr. Hirsch, and myself."

This is Mr. Sundheim testifying.

A. As to which conference?

Q. "We went over"—at the Mayor's office—"We went over the entire situation again. I had told him I told the Mayor in Mr. Leader's presence what I had agreed to do at the conference in my office I was about to leave when he called in I think,"—when the Mayor, referring to the Mayor—"I was about to leave when he"—referring to the Mayor—"called in, I think, Mr. Syme, Mr. Witkin, Mr. Frankel, Mr. Kugelman, who was the owner of the Arteraft, I think Mr. Kutz who was the mediator, for the State Department of Labor and I think that is all Mr. Sharfsin and the Mayor."

A. Now, what is your question?

Q. Well, does that tally with your recollection?

A. Vividly, because the conversation that we had regarding our particular problem took place after a conversation or a conference began in the Mayor's office that same evening involving the Arteraft. In other words, we were there originally.

Q. Well, you say "we"; who?

A. Mr. Sundheim, the Mayor, Mr. Leader, I think Mr. Frankel—I am just thinking when they came in, Mr. Frankel happened to be representing the Arteraft, but in any event—

Q. I was not there?

A. You were there. Whether you were there when the conference began or whether you came in later I don't remember, but when we came to the Apex problem, when we discussed the question of arbitration, you were there, because I recall distinctly talking to you at a time that the Mayor took Mr. Leader aside and took him outside to talk to him privately.

Q. Let me refresh your memory, Mr. Hirsch, as to what actually happened. You convened with Mr. Sharfsin and the Mayor and with nobody else, at seven o'clock that evening. At about eight-thirty I was called and told to come over to the Mayor's office, by Mr. Frankel. I first came to Mr. Frankel's office, and then we waited in the Mayor's waiting room, Mr. Frankel, Mr. Witkin and myself,—

A. I don't know this.

Q. —and about nine-thirty, you were sitting at the time with Mr. Sharfsin and the Mayor, and about nine-thirty, at Mr. Witkin's request—Mr. Witkin is the chairman of the County Commission, for the record—we were finally admitted, and then

after we were in there for about an hour the question of arbitration originally was suggested by myself, if you recollect, and then the discussion started on that score. Do you remember that?

A. I remember that, but I do remember that you were present during the time that the problem of the Apex was discussed.

Q. Oh, of course I was present there subsequently.

A. The same evening.

Q. Yes, at nine-thirty, but this doesn't tally with my recollection and apparently it doesn't tally with Mr. Sundheim's statements.

A. Well, I think it does, but I don't know what your recollection is on the subject.

Q. I am afraid that your recollection on that score is just about as accurate as your recollection of "War is war".

A. Thank you.

MR. SYME:
That is all.

MR. HIRSCH:
Plaintiff rests.

MR. SYME:
May we see you at side bar?

THE COURT:
That is, rests except for the issue of damages.

MR. HIRSCH:
Oh, yes. I mean, I rest on the question of testimony relating to liability.

THE COURT:

Yes, all right. All right, gentlemen, do you want to see me?

MR. SYME:

May we see you at side bar just a second?

THE COURT:

Certainly.

(The following occurred at side bar:

THE COURT:

Mr. Syme now moves to dismiss on the ground, one, that the Court is without jurisdiction because no violation of the Sherman Act has been proved. Any other ground?

MR. SYME:

And, two, that the requirements of Section 6 of the Norris-LaGuardia Act has not been complied with and liability has not been established with reference to the defendants named in the complaint.

THE COURT:

The motion is denied. In a case of this importance, particularly in view of the decision of the Circuit Court of Appeals, I think that the questions should be considered upon a point reserved rather than upon a motion to dismiss at this stage of the proceedings.)

Defendants' Evidence

WILLIAM LEADER, recalled.

Direct Examination

BY MR. SYME:

Q. Mr. Leader, you are the president of Branch 1 of the American Federation of Hosiery Workers, is that right?

A. That is right.

Q. And you have been president for how many years?

A. Since 1934.

Q. Since when?

A. 1934.

Q. 1934. Just for the record, Branch 1 is a defendant in this case, and you are president of Branch 1 at present, is that right?

A. That is right.

Q. And prior to the time that you—or, rather, how were you made president of Branch 1?

A. I was elected president by the membership.

Q. You were elected president by the membership, and how often do elections for officers occur in Branch 1?

A. Once a year.

Q. Once a year. Does the entire membership vote?

A. That is correct. They have the privilege to vote.

Q. Are there any qualifications or any limitations on voting?

A. Not as long as you are a member,

Q. Not as long as you are a member. Prior to the time that you were elected president of Branch 1 did you hold any office in the union?

A. Vice-president.

Q. And when were you first elected—that, also, is an elective office, is that right?

A. That is right.

Q. And when were you first elected as vice-president?

A. 1930.

Q. 1930, and elections for the office of vice-president also occur every year?

A. That is right.

Q. And prior to time that you were vice-president of Branch 1 did you hold any other office in the union?

A. Chairman of Shop Associations and member of the executive board for many years.

Q. But during the period that you were not vice-president you worked as a hosiery worker, is that right?

A. That is right.

Q. How many years have you been working as a hosiery worker?

A. From about 1913.

Q. 1913, until you were elected vice-president, is that right?

A. That is right.

Q. How many members does Branch 1 have?

A. Approximately fifteen thousand members.

Q. And all of your membership is engaged in the hosiery industry?

A. That is right.

Q. All of your members work in Philadelphia?

A. That is right, with the exception—

Q. You have no—

A. With the exception of one small shop that is in Cheltenham, but right in the city limit.

Q. Right within the city limits?

A. That is right.

Q. Does your union have jurisdiction over hosiery workers outside of Philadelphia, outside of the Cheltenham shop?

A. Absolutely no.

Q. Now, Mr. Leader, what officers does Branch 1 have?

A. We have a president, a vice-president, and a secretary-treasurer, which are full-paid off offices. We have five elected trustees, and we have an executive board, a local executive board of approximately thirty-nine elected members, including the officers.

Q. So that for the fifteen thousand members that you have, you have three paid officers, is that right?

A. That is right.

Q. And you have trustees and an executive board. Will you tell me, Mr. Leader, in 1937—that is, at the time of the occurrence of the Apex Hosiery strike—how was your executive board composed?

A. The executive board at that time was composed of members who were elected from every shop.

Q. So that every shop in the city had representation on your executive board?

A. That is correct.

Q. How many members did each shop have?

A. I believe a limit of three members from each shop.

Q. Three members from each shop. How many members did the entire executive board have?

A. I would say approximately one hundred and twenty-five to one hundred and thirty-five members.

Q. And how many members were there on the board of trustees?

A. Five.

Q. Five. That is the number you have today?

A. That is correct.

Q. And that is the number you had in 1937?

A. That is correct.

Q. Now, Mr. Leader, in addition to those officers of the union do you have shop committees?

A. We do.

Q. You do. How many shops are there today under contract with Branch 1?

A. At present—

Q. Approximately.

A. At the present time, approximately forty full fashioned mills and about fifteen finishing plants.

Q. Forty full fashioned mills and fifteen finishing plants?

A. That is right.

Q. Suppose you explain the difference between a full fashioned plant and a finishing plant.

A. A full fashioned plant as we term it is one where they knit the stocking, and sometimes also finish it. A finishing plant is a plant that takes work from mills which knit it in the greige, dye it, and finish it, and then either return it to the mill or send it out to the customer.

Q. Are there such things as commercial finishers?

A. There are.

Q. What do you mean by a commercial finisher?

A. A commercial finisher is a finisher who doesn't knit any work of his own, but gets work from plants that do knit it, and either finish and sell it on their own account or finish it and sell it for the account of a customer.

Q. So that today you have approximately fifty-five plants under contract—

A. That is right.

Q. —with Branch 1?

A. That is right.

Q. About how many did you have in 1937?

A. At the start of 1937?

Q. Well, no; around May.

A. I would judge approximately about twenty-two full fashioned mills and a certain number of finishing plants.

Q. Twenty-two full fashioned mills. How many did you have on January 1st, at the beginning of the year 1937?

A. I would judge about eighteen.

Q. About eighteen, full fashioned mills?

A. Full fashioned mills.

Q. So that between the beginning of the year and the latter part or the middle of the year the only increase you had was about four plants?

A. That is correct.

Q. Now, you began telling us, Mr. Leader, that in the different shops you have shop committees, is that right?

A. That is right.

Q. Explain to us a little bit about this shop committee set-up.

A. A shop committee—

Q. Well, do you mean a shop committee or a shop association?

A. Well, you wanted me to explain the set-up?

Q. That is right.

A. A shop which we have under an agreement has a shop association of their own of members who work in that particular shop. They call a meeting and they elect their own officers who act as the shop committee. That shop committee has the power to take up grievances.

Q. Do they have the power to bind the union in any way?

A. They have absolutely no power at any time to bind the union to anything. They are subject to reversal by the union on their position on a grievance, also.

Q. Are they considered officers of the union?

A. They are not.

Q. Are they considered in the same capacity as members of the executive board are?

A. They are not.

Q. About how many employees would you say, Mr. Leader, the average hosiery shop has? Or, you don't know, I withdraw that.

A. I could give you particular shops.

Q. Yes.

A. But not the average.

Q. Withdraw that. Mr. Leader, the greater part of the hosiery plants are located in one section of Philadelphia, isn't that right?

A. That is correct.

Q. What section of Philadelphia is that?

A. The northeastern section.

Q. Do you live in the northeastern section of Philadelphia?

A. I do.

Q. How many years have you lived there?

A. I would judge about thirty-five.

Q. About thirty-five years. Are you familiar with the Northeast?

A. I am.

Q. It is a highly industrial section, isn't that right?

A. Absolutely.

Q. Now, name some of the major industries in the northeastern part of Philadelphia.

A. Aside from hosiery there are radio plants which employ approximately about fifteen thousand people, mainly at the Philco Radio plant, Heintz Manufacturing Plant, which employs a few hundred people, we have different textile mills, upholstery mills along Allegheny Avenue, and textile mills by any number of them, and there are plants such as the Disston saw mills, and plants such as the Stetson hat factory, and innumerable other ones, if you want me to go on to—

Q. That is enough, Mr. Leader.

A. —mention them.

Q. All of those or a greater part of them that you have mentioned are unionized, isn't that right?

A. That is correct.

Q. You operate under contract today with all of the hosiery plants in Philadelphia?

A. Every one of any size, with the exception of a few small plants, with one or two machines, which are more or less classed as bootleg plants by the trade.

Q. Now, Mr. Leader, suppose you give us some of the major provisions in the union contract, in the average hosiery contract.

MR. HIRSCH:

Well, I think—I have hesitated to object because I want to give them wide latitude, but I don't think that has anything to do with the question at bar.

MR. SYME:

Oh, we are going to discuss this—

MR. HIRSCH:

It is entirely irrelevant, and I object to it at this time.

MR. SYME:

The difficulty with Mr. Hirsch is that when he had witnesses on the stand he insisted upon telling about closed shop, closed shop, closed shop, until the ears of the jury have been cluttered with it. Now, it is only fair, having my witness on the stand, that at least one witness explain what this "bogeyman" of the closed shop is.

THE COURT:

I don't think the matter is relevant. I will sustain an objection if it is made.

MR. SYME:

Well, Your Honor, there is also the issue of check-off, union membership, the question of responsibility and ratification. How could a member renounce anything or resign from the union when if he resigned from the union he

would lose his job? The question of the Norris-LaGuardia Act comes in.

THE COURT:

I don't know just how.

MR. SYME:

Well, if Your Honor will bear with me for a minute—

THE COURT:

Surely, I will be glad—

MR. SYME:

—I will explain it.

THE COURT:

—to hear from you. I don't understand how the—

MR. SYME:

Well, Your Honor—

THE COURT:

It may have been—

MR. SYME:

—I am sure that as we develop this case, Mr. Hirsch is going to say that the reason that the union membership ratified this was by virtue of the fact that knowing it and knowing that the union was paying dues it didn't take the opportunity of either resigning from the union or renouncing its membership. Now, it becomes exceedingly pertinent to demonstrate that a renunciation or resignation from union membership involved loss of jobs, and the closed shop and the check-off provisions become exceedingly pertinent.

MR. HIRSCH:

Not on the legal question of ratification.

MR. SYME:

Oh, yes.

MR. HIRSCH:

The fact they didn't renounce or resign because they might lost their job doesn't relieve them of the fact that they ratified by not resigning. I object to that strenuously, sir. They may have had an economic reason, but that didn't prevent legal ratification.

THE COURT:

Well, the question is broader than your suggested reason for it.

MR. SYME:

Well, it could hardly be broader. The crux of this case, or, at least, one of the major issues in this case is going to be the question of union responsibility,—

THE COURT:

Yes, surely.

MR. SYME:

and union responsibility—if Your Honor objects to the way I framed the question, that is perfectly all right, I am quite ready to reframe it and further narrow it down.

THE COURT:

Well, suppose you do. I want to have the fullest possible light on the question of union responsibility, of course. That is a major issue in the case, as you say, but I don't think it is necessary to go into the general discussion of

closed shop, and advantages and disadvantages—

MR. SYME:

No, but it is important—

THE COURT:

All right, suppose you get it down to the point that you have in mind, and then I think it will probably be all right.

MR. SYME:

I hope Mr. Hirsch won't object to this—

MR. HIRSCH:

If you are doubtful about it I will have to listen very carefully.

MR. SYME:

Perfectly all right. I will tell Mr. Leader not to answer until he listens to your objection.

THE COURT:

Well, what we really want to know is what leeway and what rights a man has and what happens to a man who doesn't like the things that are being done by the union under its constituted authorities. You can put the question in any way that you want to like that, that bears on the question of ratification.

MR. SYME:

All right.

BY MR. SYME:

Q. Well, all of the shops that are in the City today that are under union contract are on a closed shop basis, is that right?

THE COURT:

That is all right.

BY MR. SYME:

Q. Is that so, Mr. Leader?

A. That is correct.

Q. Now, will you explain a little bit what you mean by the closed shop?

A. The closed shop is an agreement signed with the consent of the manufacturer which makes it compulsory for the member who works in that shop when the agreement is signed to remain a union member if he wants to keep employment in that shop.

Q. And suppose an employee resigns from the union, what happens to him?

A. From the Branch?

Q. That is right.

A. Has the right to appeal if he is resigning for any reason to the National office. In the event he resigns from the Branch we would probably accept his resignation.

Q. And then what would happen to his job?

A. That would be a case for the impartial chairman to decide.

Q. Could the employer keep him working during the time that he had resigned from the union?

A. Absolutely.

Q. Doesn't your contract provide that none but members in good standing of the union can be employed by the employer?

A. That is right.

Q. Aren't you confusing two things, Mr. Leader? The appeal to the executive board, to the national executive board, lies from expulsion by the union, isn't that right?

A. That is correct.

Q. But where a man voluntarily withdraws from the union doesn't that subject him to discharge immediately?

A. That is correct.

Q. All the union has to do is notify the employer, isn't that right,—

A. That is correct.

Q. —he is not a member in good standing of the union?

A. That is correct.

Q. What do you mean by "good standing"?

A. Good standing means that he has taken an obligation with the union, become a member, and as long as he remains a member, why, he is in good standing.

Q. Is the Apex Hosiery Company a closed shop today?

A. It is.

Q. Are all of the employees of Apex Hosiery Company members of the union?

A. They are.

Q. Does your union maintain a separate strike fund?

A. It does not.

Q. Mr. Leader,—

BY THE COURT:

Q. You testified that around May, 1937, there were about twenty-two full fashioned mills that had union agreements, is that right?

A. That is correct.

Q. Now, did you mean that they were all closed shop agreements?

A. All the ones that we had.
Q. All the twenty-two?
A. Yes.

THE COURT:
All right.

BY MR. SYME:

Q. Mr. Leader, prior to May the 6th, 1937 did you at any time conduct any negotiations or any conferences with the Apex Hosiery Company?

A. What do you mean by "conduct any negotiations"? We had no conferences—

Q. You had no conferences?

A. Yes, now, what do you mean by the question, negotiations?

Q. Did you have any labor difficulties with the Apex Hosiery Company prior to May 6th?

A. Let me answer the question in this way, that we sent them a copy of an agreement which was similar to other agreements that were signed in the City of Philadelphia. We asked them to consider it and we hoped to follow that up with conferences, which were never held.

Q. Why were those conferences never held?

A. For the reason that I could make no contact with Mr. Meyer, after several years of trying.

Q. What do you mean, you could make no contact with Mr. Meyer after seven yeags of trying?

A. After seven years of having members off and on from the Apex union who at different times expressed a desire to get collective bargaining in the shop, and continued telephone calls which were never answered, why, that was the extent of the trying. We were limited by an injunction to stay

away from the plant, and the telephone was our only means of in any way endeavoring to make contact.

Q. All right. Immediately prior to May 6th—when I say immediately prior, May 5th, 4th, 1st—did you try to reach Mr. Meyer—

A. On May—

Q. —or Mr. Struve?

A. Preceding when?

Q. May 6th, 1937, except for the letter, after you sent the letter enclosing contract and asking for the conference, did you try to reach Mr. Meyer or Mr. Struve?

A. By telephone, correct.

Q. You did? About how many times?

A. I would say about a half a dozen.

Q. And what was your answer?

A. The operator would always ask the name of who was calling, and when the answer was "Mr. Leader", the answer from the operator was, "Mr. Meyer is not in".

Q. Mr. Leader, did you take up the question of the Apex Hosiery Company with your executive board?

A. With the executive board, along with the other shops in the City at the time of signing our agreements, the Apex would always be mentioned, and a motion was passed by the executive board that we should endeavor to get an agreement in all the shops as possible, which was an annual proceeding, and at all times was the business agents authorized to declare strikes in the event that we went through with collective bargaining, and a similar motion was made in the case of the Apex.

Q. Now, when you say "declare a strike" what do you mean by that?

A. I mean by that that it is the custom of our union at all times to go through with negotiations to the limit, we endeavor to get an agreement, to take it up with the people involved, namely, the workers who work in the plant. After a report is made to them and after every resort as far as negotiations is concerned is tried, it is then left up to the workers in that particular shop to meet with us what action they want us to take.

Q. Why didn't you try other means of negotiations before you declared a strike at Apex?

A. I tried in every manner possible to contact the firm and at the same time live up to an injunction handed down by Judge Finletter, which prohibited anyone from going near the place. In April, 1937 the Wagner Act was declared valid by the Supreme Court, which then give us the right to appear personally in front of the shop. I then called the meeting of the workers in that shop, who—

Q. Now, wait. When did you call this meeting, Mr. Leader?

A. The meeting was called on the night of May 5th.

Q. On May 5th?

A. That is right.

Q. And at this meeting, you say you called the meeting May 5th, you called a meeting of the workers of the shop?

A. That is right.

Q. And what happened at this meeting?

A. This meeting was held at the northeast corner of Fifth and Butler Street, on the second floor of a restaurant and cafe there, and they were all Apex workers at this meeting with the exception of one or two other representatives from the union.

The workers at that time asked for further information in respects to their rights under this Wagner Act, which had just been declared valid by the Supreme Court. I explained to them Section 7 (a) of that Act, which give them the right to ask for a—

MR. HIRSCH:

Do you think that all this—I don't want to, I am trying to keep down on objections, but he is now going into conversations that he had—

MR. SYME:

Oh, I am getting to May 5th,—

MR. HIRSCH:

—with people we weren't present at,—

MR. SYME:

—May 6th.

MR. HIRSCH:

—what he said and what they said.

THE COURT:

I will receive the testimony.

MR. HIRSCH:

All right.

THE COURT:

Keep as near the issues as possible.

BY MR. SYME:

Q. Go ahead, Mr. Leader.

A. I explained to them Section 7 (a), which give them the right to collectively bargain with their employers, and also the other sections which give them the right to choose an outside representative or a member of the union to act as their representa-

tive. They decided that they had a grievance, and something which was very important in respect to collective bargaining, they stated that—

MR. HIRSCH:

That is objected to. I object to any conversations between Mr. Leader—

THE COURT:

I think that that is—

MR. HIRSCH:

—and his workers.

THE COURT:

I think that is a correct objection. Don't go into the discussion that took place there.

MR. SYME:

All right.

BY MR. SYME:

Q. Mr. Leader, as a result of this meeting what instructions did you receive from the workers of the Apex Hosiery Company?

A. The workers of the Apex Company took a vote and they voted that I should take a committee the following day, request a meeting from Mr .Meyers, to listen to their grievances and take up collective bargaining for an agreement, and in the event that he would refuse to meet this committee and in the event he would refuse to meet them on May 6th, the time that I would appear, that I was instructed to declare a strike on their behalf.

Q. Mr. Leader, you have heard testimony by witnesses that you had people loitering about the Apex Hosiery plant several days before the strike, before

May 6th. Did you at any time instruct people to loiter about the plant, intimidate or coerce anybody?

A. I never at any time instructed anyone before May 6th to loiter about any plant or to intimidate or coerce anyone about anything.

Q. Was anybody authorized to act either on your behalf or on behalf of the union prior to May 6th?

A. Absolutely not.

Q. Or, as far as that goes subsequent to May 6th?

A. That is correct.

Q. Now, Mr. Leader, on May 6th at what time did you get to the Apex Hosiery plant?

A. Approximately about 1:45.

Q. And at 1:45 when you got to the plant what did you do?

A. I parked my car on Luzerne Street.

Q. Prior to 1:45 did you get any reports from any of the Apex Hosiery Workers as to what was happened at the Apex Hosiery plant?

A. Absolutely not. I was home going over agreements.

Q. Did you know, did you know that the Apex Hosiery plant was closed?

A. I did not.

Q. When you got to the Apex Hosiery plant at 1:45 what did you do?

A. I parked my car on Luzerne Street at the north side of the mill. I went over and I met Mr. Etter, who was elected by this group as the chairman of the Apex workers the night before, asked him, did he have his committee there, and he said he did, so that took approximately about twenty-five minutes to a half an hour to walk up to the

corner, get the chairman of the committee and the rest of the committee. I would say about 2:20 I took the committee, as instructed by them the night before, went up the steps of the Apex Hosiery mill and knocked on the door. I knocked on the door, and as I did a man asked what was wanted. I told him that I had a committee of Apex workers here who had chosen me as their representative and I desired to see Mr. Meyer on the question of collective bargaining.

He went inside and a few minutes later come out and said, "Mr. Meyer will not see you."

Q. That man went inside. You were standing on the outside—

A. That is right.

Q. —all this time?

A. That is right.

Q. Yes.

A. And had to talk quite loud, as the door, as I can recall, either was on the crack or not open at all. He could understand me and I could understand him.

Q. That accounts for that loud voice,—

A. That is correct.

Q. —is that it? Go ahead.

A. As he come back again, I again requested him to go in again and make the same request from Mr. Meyer. Again I received the same answer.

Inspector LaRue was standing there at the time along with some other officers who were on the step listening to the conversation.

Q. When you refer to Inspector LaRue you mean the Inspector of the Philadelphia Police Department?

A. The Inspector of the Philadelphia Police De-

partment is correct. He asked me at that time if it would be any use of him going in and delivering the same message. I stated that I would be glad if he did, as I wasn't any too sure the man at the door had got the correct message. I asked him to go in and inform Mr. Meyer that I had a committee here who had instructed me to get a meeting with Mr. Meyer today on the question of collective bargaining, that they had been attempting to organize for some time, they were fearful with the mill closed down, which I had learned at that time, that they were faced with a lockout of some sort, and that they wanted a meeting, and I told him to—to impress Mr. Meyer with this important message, that my instruction from his employees was that if he wouldn't meet that day that I had to declare the strike under their instructions, and it was very important.

He come out again and he told me the same thing as the other man, that Mr. Meyer wouldn't meet me.

I again sent him in, and again the same answer. This time he said that Mr. Meyer said something about, he would meet in the attorney's office some other time. I stated, "I am sorry, but my instructions are from the workers. Now, this is the fourth time that I have told Mr. Meyer exactly what was going to happen, through his agents, and why can't Mr. Meyer please come to the door so I can tell him personally?"

Q. All you asked for was a meeting?

A. That is right, and the Inspector said that at least twice, "Now, I went back, but it is no use, Bill," he said, "That was his final answer."

I said then to the committee, I said, "You have heard the answer from the man inside, you have heard the answer from the Inspector of the Police

Department. Your instructions last night was that unless this meeting was held that a strike was to be declared." I said, "Under the Wagner Act, again, let me tell you that the declaration of a strike does not interfere with your rights or does not stop Mr. Meyer from meeting you," in other words, by refusing to meet, and a strike being declared, did not take any responsibility off of him, so I said, "Acting under your rights under the Wagner Labor Act, and under your personal instructions last night, I declare a strike of the Apex workers who I am representing".

Q. Did you say—did you say, "I declare a sit-down strike"?

A. At no time. I said, "There is the sidewalk. Under the Wagner Act and under your constitutional rights you are allowed to picket. I at no time can instruct you to picket, and neither can anyone else. If you see fit to picket, and picket in a peaceful manner, there is the sidewalk. I will keep endeavoring to meet Mr. Meyer on the question of a meeting."

Q. All right. Now, after you said that you declared a strike, after you had tried to meet Mr. Meyer on four occasions and had been unsuccessful, then what happened according to your recollection, or then what did you do?

A. I walked down the steps and over to the other side of the street.

Q. You walked down the steps and over to the other side of the street?

A. That is right.

Q. And then what happened?

A. And I went down to get my car. My car at that time had become wedged in with other cars

which were parked in the street, and I couldn't move it either backwards or forwards. I walked up to the corner to see if I could find anyone who knew who had any cars, because as far as I was concerned, my business had been finished and I wanted to get away and do other work. At that time there was quite a large crowd gathered. I can recall someone coming running up and stating, "They are killing our people down there."

I walked over to the corner, and the crowd was very thick. I walked back again, because I knew that it would take an awful long time to try to make headway in the crowd, and I was concerned with getting out of the section, because as I stated, my business was done.

I walked down to the car again and I waited there, and after some time, I would say between the time I got to the steps of the mill and went through all I have described it was approximately about 3:20, and I would judge between the time of 3:20 and 3:30 I heard quite a number of people running down, to where I was standing, hollering, "Where is Leader? Where is Leader? Mr. Meyer wants to see Leader."

At that time there had been plenty of commotion up at the other corner, which I didn't know what was going on, because I was standing by my car. I followed the group of people who came running down, and I would say about six or eight were hollering at the same time and insisting that I go up and see Mr. Meyer, that he wanted to see me. I knew that there had been excitement up in the street. I didn't know whether any of the Apex workers who I had represented may have got arrested for some reason

or other, and I instructed at least two different people going up there to call Mr. Syme up on the way to the office and tell him that I was going in to meet Mr. Meyer and to come up, because I didn't know if I needed an attorney for any reason or not, and I knew I would be in the mill—

Q. When you refer to Mr. Syme, you are referring to me as your attorney?

A. That is correct.

Q. All right.

A. I walked in, I walked in to the door of the Apex, through the door of the Apex Hosiery mill, and Mr. Meyer was standing right at the end of the vestibule. As he seen me he come forward and extended his hand and give me a very hearty greeting.

Q. And what did he say to you?

A. He said, "Bill, Bill," he said, "Can't you do something about this?"

I said, "About what?"

He said, "About all this."

I said, "Well, if talking about an agreement or anything like that is on your mind, I am willing to discuss it," I says, "and I am willing to do it now, only too glad. Is that what you want?"

He said, "Yes, yes."

I said, "All right, where can we discuss it?"

He said, "Come back into my office."

I immediately looked around and asked him, was the committee of workers of his workers around. They weren't around. I asked, would somebody look for Etter and the committee. About five minutes later Etter and the committee come in.

Q. Yes.

A. And I took them back with Mr. Meyer into his

private office. We sat there, and he said, "What are you going to do about all this?"

I said, "Well, is it an agreement you want to talk about, or what is it you want me to do? After all, I am interested in organizing shops, and I am interested in the peaceable settlement of anything. I don't know what is going on here, but what is it you want me to do?"

He said, "Well, what is it you want to talk to me about an agreement on?"

I said, "You got a copy of the agreement, you know what it is, what is your opinion of it?"

He said, "I am not in very good physical shape to talk. I am mentally excited and everything else."

I said, "Well, I don't expect you to be rational in mind, you are in here and I am not going to demand anything, all I want to know, are you ready to meet and discuss an agreement with the union?", and he said, "Yes".

I said, "When will you discuss it, and what else is on your mind, if anything?"

He said—

Q. All this went on where, in the office?

A. In Mr. Meyer's office, along with this committee.

Q. Now, Mr. Meyer was sitting at his desk?

A. Sitting at his desk.

Q. And you and the committee were sitting around there?

A. Sitting on the furniture, his chairs and his settee, I think there.

Q. Right.

A. We then begin to discuss the time of when we would meet. He said that he would meet the following morning.

I said, "That is perfectly all right." I said, "Where do you want to meet?"

He said, "Well, we could meet in the attorney's office or we could meet somewhere else."

I said, "Well, it is all right with me if you meet in the mill, here."

He said, "All right, what time will we meet?"

I said, "Well, what time do you think you want to meet?"

He said, "I will meet at eleven o'clock."

I said, "That is perfectly O. K., so as far as I am concerned, is that what you wanted me to talk about?"

He said, "Yes, but I want you to do something about all this out in the mill."

I said, "What is out in the mill?"

He said, "Those workers are running wild out there."

I said, "Who?"

He said, "Our workers, they are running wild in the warerooom."

I said, "Now, what do you want me to do about that?"

He said, "Well, now, Mr. Leader, isn't it a question, when you have strikes and people stay in the mills, if they want cots you will supply them?"

I said, "Do you want cots for the people who are in your mill? I don't know who is in there."

He said, "Well, they are our workers in there."

I said, "All right, what do you want me to do?"

He said, "Will you supply them with cots? Will you bring food in to them, if they are going to stay, because I don't want them sleeping on the machines and the wareroom tables and everything else."

I said, "If that is what you want, O. K. I will go

out. And what else do you want me to say to them, if anything?"

He says, "Tell them, please be orderly at all times in this mill".

I said, "Then you got three things, you want the people out here—who you say are your people, and I don't know, I am taking your word for it—you want them to be orderly, you want cots supplied to them, and you want food brought in to them?"

He said, "That is correct."

I said, "Well, what do you want me to do?"

He said, "Go out and talk to them."

I said, "I will do it if that is your request."

Just then, I believe at that minute, you arrived on the scene, as we were about to get up. I informed you that the committee—when I say "you", I mean Mr. Syme.

Q. Mr. Syme, all right.

A. I informed you that the committee and Mr. Meyer had just discussed the question and that they arrived at certain conclusions,—

Q. Which you had agreed—

A. —and would Mr. Meyer please go over with you, so there would be everything definite, because I appreciated walking into a mill with excitement going on, that an attorney's presence wouldn't hurt anyone, and he repeated—

Q. All right, and that you agreed to meet the next morning, isn't that right?

A. That is right, so he repeated the fact that we had agreed to meet definitely in the mill the next morning at eleven o'clock. We started—

Q. All right, what did you do after that?

A. We started out of the office and went about thirty feet out when we met Mr. Struve.

Q. Yes.

A. Mr. Meyer explained to Mr. Struve where I was going, at his request, out to the wareroom to talk to the workers to tell them to be orderly, and he said, "And I asked Leader to bring in cots and have them for the workers and he said he would see what he could do."

I went out to the wareroom and there was great disorder out there.

Q. Just one question, did Mr. Meyer at that time ask you to do anything about the crowd outside?

A. Not at that time.

Q. All right.

A. I went out to the wareroom, and there was great disorder out there. There was an awful lot of people. I said to him, "How do you expect me to get order in a crowd like this and give them a talk?"

He said, "Leader, for God's sake, will you do the best you can? Stand up and talk to them. Do anything, but please get them peaceful around here, and please tell them what I am telling you".

I said, "All right, but I have got to get something to get order."

They said, "Well, stand on the table".

I said, "Well, that won't mean anything either, because I can't get order that way", so someone handed me a stick to rap for order, like you use in the union meeting as a gavel, in other words, something to attract their attention.

Well, I rapped for order with that stick, I think five or six times. I succeeded I imagine in getting maybe forty or fifty people who were definitely around the table to probably listen to what I was going to say, but I done the best I could. I stood up there and stated, "I am here at the request of Mr.

Meyer, and I am here at his request, that he thinks, he thinks you people in here, who are his workers, are going to stay in the plant, and if you do, and if you are going to stay in, he is requesting the union, will they supply them with cots and will they supply them with food, and he asked, above all, will you please be peaceful and orderly if you are going to stay in here? Now," I said, "That is his request, and it means, I imagine, that at all times anyone who stays in this mill shouldn't smoke, because there is fire hazards, and," I said, "aside from that, I think he wants you to do what is right while you are in here. We have got a meeting tomorrow morning and we are all hoping that it is going to be settled."

With that I left. Photographers were there taking pictures and asking permission, could they take them. I said, "Go ahead and take them, because it is a peaceful meeting and I think that it is certainly going to help the situation." Now,—

MR. SYME:

Your Honor, will you request order in the court room? There are a lot of Apex people here, all these people, and there is a condition very uncomfortable for the witness.

THE COURT:

Well,—

MR. HIRSCH:

Now, I think that remark of Mr. Syme was entirely unwarranted, unless he can point to some Apex person who was not a member of the union who created any disorder.

THE COURT:

It doesn't matter,—

MR. HIRSCH:

Of course.

THE COURT:

—but, now, the parties in the court room will preserve order and not make any demonstration, or have any laughing, or anything of that sort. Otherwise we will just simply have to clear the court room and go ahead. We are not going to have that.

BY MR. SYME:

Q. Go ahead, Mr. Leader.

A. We then come out of the wareroom and come back into Mr. Meyer's office. I definitely went over again what he said. I said I would see what I could do in the matter in respect to filling his requests if the people stayed in the mill. I at no time knew people were going to stay in the mill, and only took his word for it, that they were going to stay in.

He then said, "What are you going to do about these people outside?"

I said, "Who are they?"

He said, "I don't know."

I said, "Are they your people?"

He said, "I dont know who they are, but there is thousands of people out there".

And I said, "Well, I don't know who they are, either. Now, what do you want me to do with that?"

He said, "Will you go out and talk to those people," he said, "and tell them that we are going to have a meeting tomorrow morning where we are going to negotiate an agreement, and will they please go away from here?"

I said, "Do you expect me as a miracle man to

stand up and make my voice go ahead of all these people out there?"

He said, "Isn't there a sound truck somewhere around?"

I said, "I don't know."

He said, "Will somebody see if they can find a sound truck?"

I said, "Well, now, if there is a sound truck around when I get out there, and I will go out now and see what I can do, again at your request, I will be glad to talk through a sound truck and tell people just what we arrived at here, at your request".

I went outside, and by the time—that took maybe ten minutes more—and by the time I got out there, there was a sound truck across the street. Now, on that side, across, west of the mill on Fifth Street, the police had formed some kind of a cordon, because the word had got out that there was going to be an announcement made on the sound truck, and traffic temporarily had stopped. I went out there and talked through the sound truck and notified the people that—who I was, identified myself, and said that I had just had a meeting with Mr. Meyer, that we were going to have a meeting the following day where we were going to begin negotiations for an agreement at the Apex shop.

Q. Did that disperse the crowd?

A. As I was finishing the last words I got one of the sweetest duckings I ever got in my life, it started to rain and rain hard, and inside of five minutes the streets were cleared. Now, whether or not the rain chased the people away or my voice in making the announcement, I don't know, but it did rain, and rain hard.

THE COURT:

Well, now, I think it would be a good time to recess for ten minutes.

(Recess at 3:35 o'clock P. M.)

WILLIAM LEADER, resumed.

Direct Examination (Continued)

BY MR. SYME:

Q. Mr. Leader, after you had addressed the crowd and the rain fell and the crowd dispersed about what time would you say that was?

A. I would judge it would be in the neighborhood of 4:30.

Q. About 4:30. Do you know Miss Krupp?

A. Miss Krupp?

Q. Yes, a lady who testified to the fact that you were in the mill to approximately six o'clock and that she saw you there all the time.

THE COURT:

That wasn't her name.

MR. SYME:

Oh, I am sorry.

MR. HIRSCH:

Dorwart.

THE COURT:

Dorwart.

MR. SYME:
Dorwart?

THE COURT:
D-o-r-w-a-r-t.

THE WITNESS:
A lady who testified that I was in the mill after six o'clock?

MR. SYME:
That is right.

THE WITNESS:
Or six o'clock?

MR. SYME:
She was with you all the time.

THE WITNESS:
I don't know her.

BY MR. SYME:

Q. But it is a fact that you did address the crowd, isn't that right?

A. That is correct.

Q. And you weren't in the mill all this time?

A. That is correct.

Q. What did you do after you addressed the crowd?

A. I went home, changed my clothes.

Q. Now, on May 7th about what time did you get to the Apex Hosiery Company?

A. I would judge about ten-fifteen.

Q. And when you arrived at the mill at ten-fifteen what happened?

A. I had been requested to get up at the mill earlier than the appointment.

Q. By whom?

A. A Mr. Cooley, I believe the name was.

Q. Mr. Koelle?

A. Koelle.

Q. You have heard him testify on the stand?

A. That is right.

Q. What happened? Tell us.

A. I was in the Thirtieth District Police Station.

Q. What were you doing there?

A. There had been some arrests.

Q. That is the Front and Westmoreland Police Station.

A. I stopped there to see if they were our members and to see what the trouble was, if any. While there I received a telephone call, and the voice on the other end of the phone said it was Mr. Koelle. If I am not correct with the name,—

Q. Yes.

A. —it is the gentleman who testified here. He stated that, would I please come up to the Apex shop immediately?

I asked him, was the appointment put forward to an earlier time than the eleven o'clock that was scheduled.

He said, no, there was a lot of disorder up there, and would I come up and see what I could do.

I said, "Well, I have got nothing to do with that situation, and I don't know whether I should come up or not".

He said, "Well, please come up and see what we can do about it".

I left the station house and went up there. I met him, and he told me there was quite a commo-

tion out in the wareroom, and would I do something. I asked him, did I have permission to walk out in the wareroom.

He said, yes, and I walked out, and seen nothing unusual, and walked back again. When I come—

Q. Now, you were to have a conference that morning, isn't that right?

A. That is right.

Q. With Mr. Meyer?

A. Eleven o'clock.

Q. And what happened with respect to that conference?

A. When I come back I asked during that time, was Mr. Meyer going to meet me at eleven o'clock as scheduled, and Mr. Koelle said to call up the attorney, that there had been some change in the situation. I asked him would he call up, and he called up Mr. Mowitz's office, as I can recall it.

Q. Mr. Mowitz was counsel for the firm?

A. Was counsel for the firm.

Q. And is counsel for the Apex Hosiery Company?

A. He was counsel at that time, I don't know.

Q. He is today.

A. And I received information from the office there that Mr. Meyer was not going to meet.

I asked why. They said that his doctor had ordered him to bed for some reason, and I asked then when would the conference be held. I was informed that Mr. Mowitz's office would get in touch with me when the conference would be held. I immediately left the mill.

Q. Now, after you left the plant on May 7th

did you return? When did you next return to the plant?

A. On the day that the Mayor of Philadelphia spoke to the people who were in the mill, after the United States District Court had ordered the workers out of the mill.

Q. That was the next time that you were there?

A. At the Mayor's request.

Q. You have heard a janitor testify on the stand that he saw you in the mill three or four times. Do you know that gentleman?

A. I do not, never seen him.

Q. Mr. Leader, you have heard testimony here with respect to the destruction of property on June 10th and on June 23rd. Did you know about that?

A. Absolutely not.

Q. You participated in conferences, in negotiations after May 7th, conferences that were held either in the Mayor's office or in Washington, or in the office of Mr. Hirsch, isn't that right?

A. That is right.

Q. One of the demands that you made on behalf of the—what were some of the demands that you made on the Apex Hosiery Company?

A. There were two important demands. One was the elimination of what we call the "stretch-out" system, where one man run two jobs; and the other was a closed shop.

Q. Any other demands?

A. Yes, we asked the—that union conditions, for example, the forty-hour week, should prevail, and other conditions which were to the advantage of the workers and in the other agreements.

Q. Did you ask for impartial arbitration?

A. Absolutely. It is in all our agreements.

Q. Why did you ask for the closed shop?

A. Because under the system of the union and employers we found that the closed shop was both to the advantage of the employer and the worker.

Q. Did you at any time refuse to meet with the Apex Hosiery Company to discuss a compromise on the closed shop?

A. Absolutely not.

Q. The final conference occurred where, the conference at which the strike was settled, do you remember?

A. In the office of the Labor Board.

Q. The offices of the National Labor Relations Board,—

A. Bankers Trust Building.

Q. —in the Bankers Securities Building, and who presided over that conference?

A. Edward F. McGrady, Assistant Secretary of Labor at that time.

Q. And did the final agreement provide for a closed shop?

A. It did not.

Q. Tell us what it did provide for.

A. It provided for the elimination of the stretch-out system, and a clause which stated one man would run one machine. It called for union rates which were prevailing at that time in the other agreements. It called for a check-off system for our members. It called for such things as free needles,—

Q. Well, look, I didn't want to discuss all of that,—

A. Yes, all right.

Q. —what I wanted you to tell us was, what was the provision with respect to the closed shop? You say the closed shop wasn't there.

A. The provision for the closed shop was a clause that said that at such time when we could show a substantial majority of workers in that shop in our union, the firm would agree to a closed shop agreement. Mr. McGrady was to be the one who would decide what a substantial majority would be.

Q. Now, Mr. Leader, did you at those conferences offer to give the Apex Hosiery Company the authorization cards signed by a substantial number of the people?

A. Absolutely.

Q. And what was the answer of the Apex Hosiery Company?

A. Their answer was they wouldn't accept our cards as something which they would recognize.

Q. And they wanted you to do what?

A. They wanted us to change the card and word it the way they wanted it worded and then get the card signed over again.

Q. And you supplied the Apex Hosiery Company with cards, is that right?

A. That is right.

Q. And today the Apex Hosiery Company is operating under a contract with the union?

A. That is correct, three-year contract.

Cross Examination

BY MR. HIRSCH:

Q. And the cards which you supplied us were the new check-off cards which you received from

the workers who were members of the union and employees of the Apex plant?

A. Which card do you mean?

Q. The check-off authorization cards.

A. The first cards?

Q. No, the ones we actually accepted.

A. They were cards of which you had helped to word, to your satisfaction.

Q. But the ones that we accepted were the ones that you obtained from employees of the Apex plant who were members of your union,—

A. That is correct.

Q. —is that correct, and when a person joined your union they had to give you an authorization card for check-off purposes in order for you to collect the dues?

A. That is correct.

Q. And by the end of August, one month after the agreement of July 29th was signed, you supplied us with cards for one-third of our membership, is that correct, 848 cards?

A. You mean after we presented you with two thousand first?

Q. I mean after you presented us with four hundred which we refused, you then finally, one month after July 29th, gave us 848 cards of members who were employees in the Apex plant. Did you or did you not—

A. We—

Q. —give us 848 cards?

A. We presented you first with two thousand cards which you refused to recognize and accept.

Q. Did you or did you not at the end of August, one month after the entire matter had been settled,

when peace was restored, finally present us with 848 cards for check-off purposes, which meant you had only 848 members in our plant out of twenty-five hundred?

A. I don't recall how many cards was presented to you the second time.

Q. Now, the first time you presented us with cards which we would not accept?

A. Correct.

Q. And the reason we told you we would not accept them was because you had gotten them under circumstances which amounted to intimidation, coercion, and because you had gone to the worker's homes and thrown mud and tar in their windows, and because you had beaten them up and forced them to sign against their will.

MR. SYME:

Your Honor, I object to that.

MR. HIRSCH:

He opened that.

MR. SYME:

That is obviously—

MR. HIRSCH:

No, sir, he opened that, he told us we wouldn't accept them, I am giving the reason.

MR. SYME:

I have no objection to Mr. Hirsch cross examining the witness on this, but tar and mud—now, Mr. Hirsch knows that that is merely a dramatic plea. It is unnecessary.

THE COURT:

Well, it is cross examination. The witness can say, "No, it is not true", but I would be glad if Mr. Hirsch would shorten his questions a little bit.

MR. HIRSCH:

All right.

THE COURT:

They usually contain a good deal of oratory as well as—

MR. HIRSCH:

Let me shorten it.

THE COURT:

—interrogation.

BY MR. HIRSCH:

Q. Did we refuse to accept those cards because of the circumstances under which they were obtained, and we told you those circumstances?

A. I can't recall any explanation except they weren't worded the way you wanted them worded.

Q. Isn't it a fact that the agreement provided that we would only recognize check-off cards which were signed after the agreement was signed?

A. That is correct.

Q. And isn't it a fact that we told you at the time when the agreement was being prepared that the reason we wanted a different wording on them was because we didn't ~~want to have~~ presented to us cards which were signed up before, and we wanted to know that we were getting new cards.

A. You stated that you didn't want cards that were signed up before, that is correct.

Q. And isn't it a fact that the reason we didn't want cards that were signed up before—and we so told you—was because they had been obtained under circumstances where the signer didn't willingly sign?

A. You said you didn't want them because they weren't worded the way that you wanted them worded.

Q. Well, tell the members of the jury how it is if you had two thousand members during the height of the strike, when no agreement was signed, how you had only eight hundred and forty members among our employees one month after the agreement was signed.

MR. SYME:

Mr. Leader is not addressing the jury. Mr. Hirsch knows that perfectly well.

THE COURT:

Well,—

MR. SYME:

He will answer Mr. Hirsch's questions and try to answer them as courteously and cooperatively as he can.

THE COURT:

That is all right, but the question itself, the fact involved, is relevant. The question can be answered.

THE WITNESS:

All right, Your Honor. The only answer I can give to that is, as far as the Union knew, those two thousand cards that were signed were cards that were signed making members legitimate—

legitimate applicants for membership of the union and members of the union.

BY MR. HIRSCH:

Q. But as an actual matter of fact when the agreement of settlement was signed and when peace was restored you were only able to find eight hundred and forty-eight people who would join your union and sign check-off cards during the month of August?

A. I—

Q. Isn't that a fact?

A. I wouldn't know if that is the correct number or not.

Q. All right. You said in the beginning of your examination under questioning by Mr. Syme that between January and, as Mr. Syme put it, about the middle of the year you only signed up four new shops. Is that or is that not a fact?

A. Approximately, that is the number. I am not qualified here today—I can supply records, but taking my memory, I say approximately four.

Q. Do you recall giving a deposition?

A. That is correct.

Q. And do you recall in the deposition that you stated that during the—wait until I find it. Withdraw the question for the moment.

How many mills did you have signed up in Philadelphia by the end of the year of 1937, hosiery mills?

A. Are you speaking of finishing plants, inclusive, or just knitting mills?

Q. Knitting mills.

A. I would estimate approximately about forty-two or forty-three.

Q. And including finishing plants?

A. Well, add ten, twelve more.

Q. That would be about—

A. Around fifty-five.

Q. About fifty-five. When did your organization of the Philadelphia market begin actively?

A. I would say from the inception of the organization we continually tried to organize Philadelphia actively.

Q. But you testified in your deposition, did you not, that beginning in 1930 you put on a campaign?

A. I said personally I become elected in 1930 as vice-president and I become very active in organization work.

Q. And isn't it a fact that between 1930 and 1937 you only were able to sign up less than or approximately twenty mills, including hosiery and finishing mills, during that entire seven-year period?

A. That is not so.

Q. All right, now, we will work it out as a matter of deduction, then. You had fifty-five mills by the end of 1937,—

A. That is correct.

Q. —isn't that a fact?

A. Approximately.

Q. Approximately?

A. I mean, don't hold me to these figures one way or the other, up or down a few.

Q. Well, now,—

A. That is understood, the way I am testifying.

Q. —what do you mean by a few?

A. Well, two—

Q. I realize you may be in error.

A. That is right; two or three.

Q. All right. Now, then, you had fifty-five or approximately fifty-five mills by the end of '37?

A. That is right.

Q. Isn't it a fact that you obtained contracts for thirty-seven of those mills during the year of 1937?

A. New mills? That were not previously under contract?

Q. Correct.

A. I would say, knitting mills, approximately twenty-four.

Q. And finishing?

A. Maybe seven or eight.

Q. And isn't it a fact that you obtained thirty-seven new contracts for closed shops from knitting and finishing mills during the year of 1937 alone?

A. I would say approximately thirty-three or thirty-four.

Q. And, therefore, when I said that by the end of 1937 you had approximately fifty-four or fifty-five I was correct, when I said that prior to 1937, during the seven-year period from 1930 to 1937, you were only successful in obtaining about twenty mills?

A. You are not correct.

Q. Why?

A. Because in the year of 1931 we had forty strikes in the City of Philadelphia, and during that time twenty shops signed up. The flight of industry has taken, I would imagine, about fifty or sixty hosiery mills out of Philadelphia in the period of 1930 to 1937, so we signed them up, and they stay in business, some of them, and some of them through the economic condition of the trade are out of business, so our job is a continual job of organization. We may have forty this year and twenty next year.

Q. But in the year 1937 you signed up more new

mills for closed shops than you had ever signed up before in any one year, isn't that a fact?

A. I would say about six more than we signed in 1930—or '31, rather.

Q. And the technique that you used and the method that you employed in order to bring that about was the use of a sit-down strike in every mill which didn't immediately capitulate to your demands?

A. The union or myself at no time has ever declared a sit-down strike.

Q. Have you ever supported it?

A. What do you mean by support?

Q. Financially.

A. If it is requested in the manner that Mr. Meyer requested to bring cots into a mill and food for the people who stay in there, yes.

Q. How many sit-down strikes were there in the City of Philadelphia during the year of 1937?

A. How many sit-down strikes? I don't—

MR. SYME:

Your Honor, I object to that. He is not qualified to testify to the—

MR. HIRSCH:

Oh,—

MR. SYME:

—number of sit-down strikes—

THE COURT:

Let's not—

MR. SYME:

In the hosiery industry, all right.

MR. HIRSCH:

The hosiery industry.

MR. SYME:

All right, if you will limit the thing that is perfectly all right.

THE COURT:

All right, I understood that.

MR. HIRSCH:

I didn't mean anything different.

THE COURT:

No.

BY MR. HIRSCH:

Q. How many sit-down strikes were there in hosiery mills in the City of Philadelphia in the year 1937?

A. Strikes that were classed as sit-down strikes, and at all times I want to qualify that, that at no time has the union or the—or myself ever declared one, that those classed as sit-down strikes, in the manner as I have explained, I would judge about twenty—twenty or twenty-one.

Q. And as a result of the fact that there were a number of sit-down strikes in the City of Philadelphia your union saw fit to set up what was known as a strike kitchen at 4638 Ditman Street, did it not?

A. Our union had a kitchen at Ditman Street, I don't know the address.

Q. It was carried in the books of your union as a strike kitchen, was it not?

A. I couldn't answer that question.

Q. You had an account number 615 known as kitchen labor and expenses, did you not?

A. That may be so, and the reason I say that is because I have nothing to do with the finances of the organization.

Q. I am only asking you if you know that the union maintained a strike kitchen at forty-six hundred and something Ditman Street.

A. My answer to that question is, I definitely do not know. I believe they did.

Q. As president of the union didn't you know that your union prepared food at an expense of thousands of dollars in the year 1937 at a strike kitchen on Ditman Street, which was supplied to all of the sit-down strikers in Philadelphia at their hosiery mills?

A. I knew that they supplied food to people in the [mills] where the permission was given for it.

Q. And were you requested in every one of the twenty-two instances where a sit-down strike was conducted, were you requested by the owner of that mill to please come in and supply the sit-downers with cots and blankets and food?

A. What mills are you speaking about?

Q. All the mills that you meant that you said that twenty-two mills in Philadelphia.

A. That had—

Q. Sit-down strikes.

A. —food coming in?

Q. Had food coming in, and had cots; were you requested by the owners to supply that food and those cots, or was Apex the only one that made that request?

A. The Apex made that request to me personally.

Q. And you were able to fill that request with two hundred cots, four hundred blankets and two hundred pillows the same afternoon, were you not?

A. I don't know the amount that went in.

Q. Suppose I show you a bill for two hundred cots and blankets which your union paid,—

A. Then I would—

Q. —would you then know the amount?

A. Then I certainly would.

Q. All right.

MR. HIRSCH:

Will you let me have the originals of your bills, please?

MR. SIMONS:

Which one is it? I don't know.

MR. HIRSCH:

I know; Weil's Curiosity Shop.

(The bill was produced.)

BY MR. HIRSCH:

Q. I show you a bill produced on call by your counsel, dated May 7th, 1937, from Weil's Curiosity Shop, for two hundred cots, two hundred pillows and 406 blankets.

THE COURT:

What is the date of the bill?

BY MR. HIRSCH:

Q. Does that refresh your memory?

THE COURT:

What is the date?

MR. HIRSCH:

May 7th.

BY MR. HIRSCH

Q. Does that refresh your memory?

(The witness examined the bill.)

A. It doesn't refresh my memory, but I would recognize that, from that bill, that the union paid it, yes.

MR. HIRSCH:

And will the union also produce all of its records pursuant to subpoena, or agree that account number 621 is known as cots and blankets,—

MR. SYME:

Your Honor,—

MR. HIRSCH:

Let me finish—and that into that account on May 7th there was transferred an expense account of $2,474.50 which covered blankets and pillows purchased by the union from January 1st to May 1st, 1937?

MR. SYME:

Your Honor, if this is proper cross examination, frankly, I don't know it, but—

THE COURT:

This was not a question addressed to the witness. This was asking you to produce.

MR. SYME:

We will produce all of them.

THE COURT:

Will you agree—

MR. SYME:

We have already stipulated to that, but he is not the man to identify bills.

THE COURT:

This was not a question addressed to the witness.

MR. SYME:

Well, the preceding question asked him to identify something from Weil's Shop. He can't identify these things.

THE COURT:

Of course, that is for him to say. If he can't identify it he will say so.

MR. SYME:

He is not the proper person.

THE COURT:

Well,—

MR. SYME:

He knows nothing about it.

THE COURT:

—it is entirely for the witness to say. It is not a legal objection. If it is a question the witness cannot answer he is quite able to say so. He knows better than anyone else whether he can answer the question.

MR. SIMONS:

I will have to check my records, I don't know. If you say it is so,—

MR. HIRSCH:

It is so.

MR. SIMONS:

—if you checked the records, I will have to take your word for it.

MR. HIRSCH:

Well, then, you can recheck me.

BY MR. HIRSCH:

Q. It is agreed by your counsel that your union has an account known as account number 621, headed "Cots and Blankets", and that prior to May 7th there was another account known as "Strike Expense", from which account there was transferred into this account number 621 the sum of $2,474.50, covering the purchase of blankets and pillows during the period January 1st to May 1st, 1937, from Weil's Curiosity Shop. Were those pillows and blankets totalling $2,474. purchased at the request of mill owners in order that the union might make their employees comfortable during sit-down strikes?

A. I don't know.

Q. And did your union purchase all of these blankets and cots and pillows and maintain or set up a strike kitchen in anticipation that someone such as Mr. Meyers may some day ask you to supply cots and food and blankets to the sit-down strikers,—

A. You ask—

Q. —or were they set up because your union had adopted a method, a campaign in Philadelphia, of unionizing the non-union mills by the use of a sit-down strike technique?

A. I had nothing to do with the setting up of a kitchen. I know nothing about the setting up of a kitchen.

Q. Now, answer my question.

A. Will you repeat it again, please?

MR. HIRSCH:

Mr. Rodebaugh, will you read it, please?

(The question was repeated by the reporter as follows:

"Q. And did your union purchase all of these blankets and cots and pillows and maintain or set up a strike kitchen in anticipation that someone such as Mr. Meyers may some day ask you to supply cots and food and blankets to the sit-down strikers or were they set up because your union had adopted a method, a campaign in Philadelphia, of unionizing the non-union mills by the use of a sit-down strike technique?")

A. I think again there is about three questions there. I don't want to evade answering—

MR. SYME:

Exactly, the witness has said it himself!

A. —the question—

MR. SYME:

I don't know whether any person, any intelligent person, sitting on that witness stand would know how to answer that question. That is a dissertation; that is not a question.

THE COURT:

Well, I think it goes very much to the point, although it is a rather long question.

MR. SYME:

Certainly.

BY MR. HIRSCH:

Q. Now, if you don't—

BY THE COURT:

Q. Let's cut it in half and ask the first question, whether this large amount of cots and blankets and money spent for it was maintained in anticipation that mill owners would request you to furnish sit-down strikers with those facilities. That is the first half of the question. That is fair enough.

A. I will answer "no" to the question.

THE COURT:

Now, you can ask the second half.

BY MR. HIRSCH:

Q. Now, as a matter of fact, these cots and blankets and pillows and the establishment of this strike kitchen for the preparation of food, was all carried out, purchased and done by the union in order to enable the union to carry out a program of sit-down strikes in the City of Philadelphia during 1937 in order to force open-shop manufacturers against their will to sign a closed shop agreement?

A. That is not correct.

Q. All right, I will leave that to the jury. Now, you supplied these cots and blankets and food to Apex at their request, correct?

A. That is right.

Q. Do you have copies of bills that you sent to Apex for the food that you supplied to them—

A. I couldn't—

Q. —at their request?

A. I couldn't answer that question.

Q. Did the union ever bill Apex for the food that it supplied to its employees?

A. As far as I know, no.

Q. What was the purpose of buying all these cots and blankets? Was the union in that business?

A. Of buying cots and blankets?

Q. Yes.

A. Absolutely not.

Q. The reason you bought that, the reason you bought cots and blankets and pillows, and the reason that you established a strike kitchen, was to enable you to assist and provide for sit-down strikers in the various hosiery mills in Philadelphia where sit-down strikes were being conducted, isn't that a fact?

A. To the best of my knowledge the kitchen was installed anywhere, wherever there was a kitchen, for the purpose of supplying food to people who had permission from a firm to bring it in.

Q. But you supplied food in every instance where there was a sit-down strike, did you not?

A. I do not know.

Q. Now, do you know why the union bought cots and blankets in the large quantity that were bought?

A. For someone to have something to sleep on where permission was given for the blankets or cots to be brought in.

Q. Name the other mill owners who asked you to bring in cots and blankets for their sit-downers, but for which requests you would never have brought them in.

A. I don't know of any mill owner with the ex-

ception of the Apex who asked me to bring any cots or blankets in.

Q. And what did you do with the twenty-seven hundred dollars' worth of cots, blankets or pillows that were purchased before May 7th?

A. I don't know who purchased them, and I don't know why they were purchased.

Q. Are there any meetings of the general membership or the executive committee conducted in your absence, as a rule?

A. No.

Q. You conduct all meetings, don't you?

A. That is correct.

Q. Now, the reason you conducted this compaign of sit-down strikes in Philadelphia is that you had a close political tie-up with Mayor Wilson, and you so said to your membership—

MR. SYME:

Your Honor,—

BY MR. HIRSCH:

Q. —ir publications—

MR. SYME:

—I object to that. Mr. Hirsch knows that that is not proper cross examination.

MR. HIRSCH:

It certainly is.

MR. SYME:

There was no examination in chief on that, and he is merely making that statement—I would much rather not state it before the jury. I would much rather state it at side bar.

MR. HIRSCH:

Well, I intend to press it, Judge Kirkpatrick, to show why such a technique was conducted in Philadelphia. There was a resaon for it, and why they could get away with it, and I am going to show that their own statements show the reason.

THE COURT:

Well, I will permit the question. The issue that has been raised is the responsibility of the union for this sit-down strike, and the general method and objectives of the union are necessarily relevant, and I think it comes within the scope—

MR. SYME:

How does Mayor Wilson come in? I can't see the close political tie-up, as Mr. Hirsch puts it.

THE COURT:

I am sorry if you don't see it. The objection is overruled.

BY MR. HIRSCH:

Q. I show you a printed paper headed "Attention—Hosiery Workers", and then it says, "A personal message to hosiery workers from your President, William Leader", and ask whether or not that was sent out by your union.

(The witness examined the paper.)

BY MR. HIRSCH:

Q. Do you recall sending that out?

A. Will you let me read it, please, first?

Q. Go ahead; I didn't mean to rush you.

(The witness read the paper.)

THE COURT:

May I see it, please?

THE WITNESS:

Sure.

MR. HIRSCH:

It is the underlined part, Judge Kirkpatrick, that I am interested in.

THE COURT:

Well, now, Mr. Hirsch, you understand that I am not interested in the statement made with respect to political connections unless it deals with and throws light on the general policy of the union with regard to sit-down strikes, and I only permitted the question because you asked whether that did not go hand in hand with the sit-down strike campaign. I don't see anything here that assumes responsibility for the sit-down strike campaign.

MR. HIRSCH:

He starts out by saying how many were happening in 1937,—

THE COURT:

I know.

MR. HIRSCH:

and then says that the organization of these mills was due to that. I think there is a direct connection.

(Discussion at side bar.)

THE COURT:

I really don't, I am sorry, but I really don't think that that bears out the—

MR. HIRSCH:

Well, now,—

THE COURT:

—suggestion that was made.

MR. HIRSCH:

Well, then, I will redraft my question, along the same lines, though.

BY MR. HIRSCH:

Q. First, did you send this to the workers?

A. Correct.

Q. And isn't it a fact that you informed your workers that "One of the greatest reasons, if not—

MR. SYME:

I object to that, Your Honor.

THE COURT:

Oh, I can't prevent the question being asked.

MR. HIRSCH:

Of course not. I am asking—

MR. SYME:

But you are reading from the paper.

THE COURT:

Let me see what you are going to ask him.

(Discussion at side bar.)

THE COURT:

I think it is proper cross examination. I will permit you to ask the question. I will overrule the objection.

MR. KATZ:

I would like to note of record, if Your Honor please,—

THE COURT:

It must be followed—we have to adjourn very shortly; yes, you may place your objection, Mr. Katz, on the record.

MR. KATZ:

Yes. I object to counsel for the plaintiff being permitted to read from a document that is not in evidence.

THE COURT:

All right, that is overruled. The witness says that he sent it out. Now, you read him that one part and then ask him the next question, which you—

MR. HIRSCH:

Well, I want the preliminary question.

BY MR. HIRSCH:

Q. This document informed the workers that during the year 1937 you were successful in signing up thirty-seven new union contracts which were closed shops for the first time?

A. That is right, that is right, I read it.

Q. Now, isn't it a fact that in the same document you said to all the workers as follows:

> "One of the greatest reasons, if not the greatest, for the complete organization of the hosiery industry in the past year has been the political affiliations, political prestige and contracts that I have built up throughout the city for our Union through political activity.

First, in my whole-hearted support as the lone Labor Leader in Philadelphia to back Wilson when he ran for Mayor, * * *"

Did you or did you not say that to your workers?
A. In there? Correct.
Q. Yes.

THE COURT:

Now, then, you may ask him, in order to show the relevancy, you may ask him whether that had any reference to the sit-down strike proposition.

MR. HIRSCH:

Well, I want to ask one further question, and then I will go into that, if I may.

THE COURT:

All right, let's get through with it.

BY MR. HIRSCH:

Q. I show you a report of the executive board meeting of the Full Fashioned Hosiery Workers dated July 13, 1937, and ask if that is a copy of the report that your union prepared.

(The witness examined the report.)

THE COURT:

You have got a different proposition here. This is not something that he wrote—

BY THE COURT:

Q. Did you write this yourself?
A. No, I—

MR. HIRSCH:

This is his report, sir. This reports his speech to the executive board.

THE COURT:

Well, all right, just ask him whether this statement made there is a correct statement of your report or your speech or your remarks.

MR. SYME:

Let me see that.

BY THE COURT:

Q. All right, what is the answer?

MR. SYME:

Incidentally, I think, Your Honor, in addition to all of this, if he is going to introduce any of these things he ought to read the entire thing,—

THE COURT:

Oh, no.

MR. SYME:

—starting out with the string band they had at the meeting.

THE COURT:

Mr. Syme, he is not introducing anything. He is merely asking the witness what he said. Now, the witness is able to answer these questions, and the matter has a logical connection with the issue involved, the issue involved of whether the union sponsored and authorized and directed generally a program of sit-down strikes, one of which was the Apex strike. Now, here is a suggestion that there were certain political affiliations, and in his proposition to me Mr. Hirsch

said he was going to follow that by asking whether or not that had reference to the ability to carry on sit-down strikes.

Now, go ahead, and ask along that line.

MR. HIRSCH:

I didn't get the answer to this question.

THE WITNESS:

The answer is, no, I did not make the statement.

THE COURT:

All right, now, then,—

MR. HIRSCH:

I will have to examine—

THE COURT:

—follow up as you suggested.

MR. HIRSCH:

Well, then, I want to examine on this, then.

THE COURT:

Oh, you can do that tomorrow. Now, let's—

BY MR. HIRSCH:

Q. Now, isn't it a fact, Mr. Leader, that the reason your union in 1937 adopted the technique of using the sit-down strike as a means of forcing employers to sign closed shop agreements—and particularly, isn't it a fact that you adopted that technique in the Apex Hosiery Company case—and that your union adopted that technique in the Apex Hosiery Company case, because you had political stand-in with Mayor Wilson in the City of Philadelphia?

A. That is absolutely not so.

Q. And, therefore, the statement that you made to the—withdraw that question.

Did you or did you not have political stand-in with Mayor Wilson in the City of Philadelphia?

MR. SYME:

Oh, I object to that, Your Honor.

A. What do you mean by that?

MR. SYME:

I don't see, certainly, what relevancy Mr. Leader's personal life has to this case.

THE COURT:

Just a minute. Now, just let me have this statement.

MR. SYME:

You might as well ask him how many children he has!

BY THE COURT:

Q. Now, the question is—just a minute, now—the question is whether this reference that you made in this bulletin that was issued to your political connections and affiliations and prestige had any connection—or, did you have in mind when you made that statement any connection with the ability or permission on the part of the authorities to carry on sit-down strikes?

A. Your Honor, the answer is absolutely no.

THE COURT:

All right. Now, then, let's continue the examination tomorrow.

MR. HIRSCH:

Now, may I have this marked for identification,—

THE COURT:

Oh, yes.

MR. HIRSCH:

—Plaintiff's Exhibit—whatever the next number is.

(Circular entitled "Attention—Hosiery Workers", signed by William M. Leader, president, was marked Exhibit P-19 for identification.)

THE COURT:

All right, gentlemen. Adjourn until tomorrow morning at ten o'clock.

(Adjourned until Friday, March 17th, 1939, at ten o'clock A. M.)

Philadelphia, Pa., March 17, 1939

Fifth Day

Defendants' Evidence (Continued)

THE COURT:

All right, gentlemen, are we ready to proceed in the Apex Hosiery matter?

MR. SYME:

Yes.

MR. HIRSCH:
Ready.

THE COURT:
I believe Mr. Leader is on the stand.

WILLIAM LEADER, recalled.

Cross Examination (Continued)

MR. HIRSCH:
I would like the photostatic, which is agreeable to the attorney for the defendant, to be marked Plaintiff's Exhibit 20.

MR. SYME:
I object to introducing anything in evidence by Mr. Leader with respect to any bills or with respect to any receipts.

MR. HIRSCH:
I am only having it marked.

MR. SYME:
He is not qualified.

THE COURT:
There is nothing offered in evidence; it is merely marked for identification.

(Photostatic copy of bill dated May 7th, 1937, from Weil's Curiosity Shop to Full Fashioned Hosiery Workers Union, Philadelphia, Pa., was marked Exhibit P-20 for identification.)

BY MR. HIRSCH:
Q. Mr. Leader, when we were finishing yester-

day I was questioning you about the political phase of your union activities, as expressed by you in your letter to all of the members, which you admitted sending.

MR. SYME:

I object, Your Honor. Are you going to admit testimony with respect to a political phase of Leader's activity?

THE COURT:

Well, Mr. Syme, no question has been asked yet. I don't know what the question is. I don't know how to rule on something that has not been asked. Mr. Hirsch is just saying what he was saying yesterday. Better wait until he asks the question.

BY MR. HIRSCH:

Q. In addition to what I asked you yesterday, isn't it a fact that at a meeting of the executive board of the Federation of Full Fashioned Hosiery Workers—which is your union—held on Tuesday, July 13, 1937 you made a report to that meeting in which you said that a group of former Apex workers were making preparations to go back to work, and that your local should as long as they had the friendship of the City Government make hay while the sun shines. Did you or did you not make that report to the executive board of your union?

A. I did not make them remarks.

Q. I show you this report again and ask whether or not that is a report of the meeting of the executive board on July 13th, 1937.

MR. SYME:

Just one minute, Your Honor. Mr. Leader

doesn't prepare reports of the executive board. He is not the secretary of the union.

THE COURT:

That is right.

MR. HIRSCH:

That is not necessary, sir, I submit.

THE COURT:

I know, but it is not a question of what that is. You can show Mr. Leader that and ask him whether in view of what he reads there he has any change to make in what he said, something of that sort you can ask him, but you cannot ask him what that is unless he prepared it or knows something about it.

MR. HIRSCH:

Well, I submit, sir, that the president of this union can be asked, at least,—

THE COURT:

Oh, I know,—

MR. HIRSCH:

—whether he knows anything about it.

THE COURT:

I know, but all you want to know is whether that causes him to doubt or change the statement that he just made. Now, that is the question to ask, and I will ask him that.

BY THE COURT:

Q. Mr. Leader, after reading that paper that Mr. Hirsch hands you, have you any reason to change the statement that you just made?

A. Well, Your Honor, I recall making a report

to our executive board on Tuesday, July 13th, and the report was along the general lines of organization activities of our union and all unions with reference to the liberal government which we were having, both in the City and in respect to the Government. I didn't make statements, as is stated in this report.

THE COURT:
All right.

BY MR. HIRSCH:

Q. Does that mean that the person—strike that question.

Who prepares that report, the secretary of your union?

A. The secretary prepares reports of our union, that is correct.

Q. And those reports are then mimeographed in form similar to that, are they not?

A. That is correct.

Q. So that the secretary erroneously reported that on July 13, 1937 you said to the meeting of the executive board that this local should as long as they have the friendship of the City Government make hay while the sun shines?

A. That is correct.

MR. HIRSCH:
Have that marked for identification as Plaintiff's Exhibit 21.

(Copy of minutes of the executive board dated July 13, 1937 was marked Exhibit P-21 for identification.)

BY MR. HIRSCH:

Q. Read through this report and tell us wherein in any other respect it is incorrect.

MR. SYME:

Your Honor, I object to that.

THE COURT:

Oh, yes, I really don't think it is worth spending the time on. I doubt if it has any real bearing on the case.

MR. HIRSCH:

I think it has a very important bearing, sir.

THE COURT:

This is made—

MR. HIRSCH:

During the pendency of the strike.

THE COURT:

No, it was made after the evacuation of the property.

MR. HIRSCH:

Not before the strike had been settled, sir.

THE COURT:

Well, I know, but it is very remote. It seems to me it is extremely remote, any bearing it may have on the real issue we are trying.

THE WITNESS:

Your Honor, could I make this explanation? In one part here it says Leader then spoke for thirty minutes, and it has got about a ten-line report on what Leader said, and I can say an awful lot in thirty minutes, you will agree.

BY MR. HIRSCH:

Q. I didn't say that that report contained everything you said. I am only asking whether what that report contains—

A. And I—

Q. —is correct.

A. And my answer was, the report in respect to workers going back to the Apex, in the language which states Leader said that we should make hay while the sun shines is incorrect. I did not say it.

Q. Now, Mr. Leader, you said yesterday that you knew very little or nothing about the fact that your union maintained a strike kitchen, is that correct?

A. Oh, Your Honor, could I make an explanation at this time which will perhaps save a lot of questions which—

THE COURT:

Well, if it is an answer to the question.

MR. HIRSCH:

No, you just answer my questions. I object to your saving me any time.

MR. SYME:

Now, Your Honor, when Mr. Hirsch asks a question such as that, "You said that you knew nothing about the strike kitchen?", the inference is that Mr. Leader is being evasive. Now, an answer by Mr. Leader that might clarify what his duties and obligations are—

THE COURT:

I don't know what you are arguing about, gentlemen. The question has been asked. He can answer it.

MR. SYME:

All right.

THE COURT:

If his answer is directed to the question he can certainly answer in his own way. He is entitled to do that. I don't know what—

THE WITNESS:

All right, will you repeat the question?

THE COURT:

—there is an argument about.

BY MR. HIRSCH:

Q. Didn't you testify yesterday that you knew very little or nothing about the fact that the union maintained a strike kitchen where food was prepared for sit-down strikers?

A. Well, I know—the Judge has stated I can answer that in my own way.

THE COURT:

Surely.

MR. HIRSCH:

Go ahead. I have no objection.

A. (Continued) I know that for years we have had kitchens set up, both for strikers and for unemployed people. I know we have at times had kitchens set up in our own union, where we give out hundreds of pairs of shoes to people who needed shoes, clothes to people who needed clothes. I know for a period of many years we give out all kinds of relief to unemployed and strikers. I know that kitchens were set up from time to time. In respect to the set up of the kitchen, I have nothing to do with that.

I am the president of an organization, that doesn't have the power to execute the orders and give the orders to someone else, we have different committees set up with that authority. The authority of setting up kitchens, and so on, is in the hands of an elected group of trustees. I know there were kitchens at all times, but I know nothing about the set-up of the kitchens.

BY MR. HIRSCH:

Q. I am talking about a strike kitchen that you maintained in 1937.

A. I am talking about strike kitchens and other kitchens. They come under the same category with our union.

Q. When was the strike kitchen that was located at 4600 Ditman Street set up?

A. I don't know, some time during the year of 1937.

Q. And when was it closed?

A. I couldn't say.

Q. Did you have anything to do with the closing of it?

A. I did not.

Q. Anything to do with the opening of it?

A. I did not.

Q. Anything to do with the strike kitchen in so far as your making any recommendations or giving any orders were concerned?

A. I did not.

MR. HIRSCH:

Produce the minutes of September 11th of your union, please, 1937, which have been subpoenaed.

BY MR. HIRSCH:

Q. You are sure of that statement?

A. That is correct.

MR. HIRSCH:

All right, minutes of the general membership of September 11, 1937.

BY MR. HIRSCH:

Q. Who keeps the minutes of the general membership, Mr. Huey Brown?

MR. SYME:

He is here.

A. The secretary, correct.

BY MR. HIRSCH:

Q. As far as you know, does he keep them accurately?

A. As far as I know.

MR. SIMONS:

Do you have an excerpt?

MR. HIRSCH:

I have an excerpt, sir. I would like to have the minutes themselves. I want the whole minutes.

MR. SIMONS:

I will bring them up. They left them at the office.

MR. HIRSCH:

All right. If I may use the excerpt meanwhile, then, we will supply the minute during the recess.

MR. SIMONS:
Yes,—

MR. HIRSCH:
All right.

MR. SIMONS:
—if that is the excerpt.

BY MR. HIRSCH:

Q. Well, counsel has agreed that I have an excerpt here made from the minutes of the regular membership meeting of Branch 1 held on September 11, 1937, and that I may use it as if it were the original. I read you that excerpt. It is headed "Report of William Leader", and I am only reading that part that pertains to the strike kitchens, of which you know nothing:

> "My next suggestion is to do away with the kitchen immediately. Now that all the strikes are being conducted on the outside I do not believe it is a practical thing from the financial end to keep this kitchen going."

Did you or did you not make that statement to the general membership meeting of Branch 1 on September 11, 1937, which is recorded in the minutes of your union?

A. I did not.

Q. And, therefore, Mr. Huey Brown, the secretary, was wrong when he put that in?

A. That is correct.

MR. HIRSCH:
I ask to have this marked at the moment for identification as Plaintiff's Exhibit number 22,

and that I may substitute the original printed when we have it supplied.

MR. SIMONS:

What date is that, sir?

MR. HIRSCH:

September 11, 1937.

(Excerpt from minutes of the regular membership meeting of Branch 1 of September 11, 1937 was marked Exhibit P-22 for identification.)

BY MR. HIRSCH:

Q. Is it the practice of your union when you hold meetings to read the minutes of the preceding meeting?

A. It is.

Q. And so far as you know, you testified yesterday you presided at all meetings of the general membership in 1937?

A. Yes, practically all.

Q. What happened at the meeting which followed September 11, 1937 when that particular minute was read and you heard it? What did you do about having it changed?

A. I did not hear it read.

Q. I ask you to produce any account which shows that a strike kitchen was maintained by your union at any time during the five-year period preceding 1937.

MR. SIMONS:

Now, wait, if Your Honor please,—

MR. SYME:

Now, wait a minute. Your Honor, I don't know whether you heard Mr. Hirsch's last question. Mr. Hirsch now is asking Mr. Leader to produce an account of any strike kitchen that was maintained in the last five years.

MR. HIRSCH:

He can do that. You are here, the secretary is here, and the treasurer is here.

MR. SYME:

What pertinence, what relevancy has that?

MR. HIRSCH:

Credibility.

MR. SYME:

Credibility? We aren't going to give you records to prove Mr. Leader's credibility.

MR. HIRSCH:

No, I want to prove it is not credible.

MR. SYME:

Well, then, you cross examine him.

MR. HIRSCH:

That is what I am doing.

MR. SYME:

You asked for our records to prove it for you.

MR. HIRSCH:

I submit I have the right to cross examine and make him substantiate his statements. He says they have always had strike kitchens. Now, they have regular books of account and they have an account called Kitchen Expense.

THE COURT:

I think it is entirely proper for you to call on the defendant to produce it. Mr. Leader may not be the officer who is in charge of it, but you can call on the defendant to produce it.

MR. SIMONS:

If Your Honor please, I don't think asking a question at this time, when the witness is on the stand, to have him produce books for five years past at this time is proper.

THE COURT:

Well, now, gentlemen, do you want to produce it or don't you?

MR. SIMONS:

If he has anything in particular—

THE COURT:

Mr. Hirsch is suggesting—now, let's get it clearly—Mr. Hirsch is suggesting that until the period of the sit-down strikes there were no strike kitchens maintained. Now, you are in a position to prove that or disprove it, entirely as you see fit, and if you do not care to disclose your records on that point, say so now, and Mr. Hirsch will then have to pursue whatever remedies he has.

MR. SIMONS:

If Your Honor please, that is not our position at all.

THE COURT:

Well, that is my position. Now, whatever you want to do about it, don't argue it, that

is all there is to it. If you say, "No, we won't produce them", say so.

MR. SIMONS:

No, no, I said to Mr. Hirsch if you ask us for any particular thing—

THE COURT:

He is now asking—

MR. SIMONS:

He can't do it now.

THE COURT:

He is now asking you for your records relating to the maintenance of strike kitchens during the five years preceding the period of these sit-down strikes.

MR. SIMONS:

Well, Mr. Hirsch certainly cannot expect us to have it here in court at this time.

THE COURT:

No, no, that is not required.

MR. SYME:

If Mr. Hirsch is making that request of us we will take it up with our clients, the proper people, not Mr. Leader.

MR. HIRSCH:

Mr. Leader is a party-defendant and a client.

THE COURT:

He is now making a request. Mr. Leader obviously hasn't got it with him here, but it is entirely up to you gentlemen to say what you are going to do about it.

MR. HIRSCH:

I make the request and ask for the production.

MR. SIMONS:

All right.

BY MR. HIRSCH:

Q. Now, Mr. Leader, you indicated that the union did not in any way order, authorize or support sit-down strikes. Isn't it a fact that during the year of 1937, and particularly during the period of May 5th to July 27th, which was the period during which the Apex plant was shut by reason of a strike, your union in the maintenance of a strike kitchen for that limited period spent, as is shown by your books, accounts number 610, 611, 612, 613, 614 and 615, over twenty-three thousand dollars for food and for labor and expense of maintaining that strike kitchen.

A. My answer to that is if our books show that, then certainly the union spent that money for food to support strikes.

MR. HIRSCH:

I ask for the union to produce the accounts or agree that the accounts do show that approximate figure. I have the figures here which we have already obtained.

MR. SIMONS:

If Mr. Hirsch had wanted that, we will agree that we supported a kitchen,—

MR. HIRSCH:

I want to agree as to the figure—

MR. SIMONS:

—there is no dispute on that, there is no dispute—

THE COURT:

I understand Mr. Hirsch is asking you to either agree that the figure is correct or produce the accounts supporting it.

MR. SIMONS:

May we have an opportunity to check the figure?

THE COURT:

Oh, yes.

MR. SIMONS:

I don't know.

MR. HIRSCH:

Let's assume that is correct, in round figures, subject to check of Mr. Simons, and we will correct the figure in any way that his check indicates.

THE COURT:

All right.

MR. SIMONS:

If the amount is important we would like to check it. If it is merely a question that we supported it, we admit it.

MR. HIRSCH:

I want the amount on the record. You can check that figure. I will check it with you later.

BY MR. HIRSCH:

Q. You testified yesterday that you had no sepa-

rate strike fund. You didn't mean that your union didn't carry on its books separate accounts showing strike expense, direct strikers pay-roll, payments to trustees for distribution to strikers, and other items, do you?

A. Let me answer that question by saying funds of our union is in the custody of the trustees.

Q. Isn't it a fact, Mr. Leader, that during the period beginning May 6th, 1937 and thereafter, while the Apex plant was shut down by reason of the strike, and during the subsequent period, your union, through account known as "Direct Strikers Pay-roll", which was number 620, paid to the Apex workers who were members of the union, including the sit-downers, a sum of approximately forty-three thousand dollars?

A. If our books show that I will agree that the money was given to strikers for relief purposes.

MR. HIRSCH:

May I have the exhibit of the vouchers, please? Subject to check with your counsel, I think that the figure will be approximately forty-three thousand dollars, covering the twenty-one thousand dollars that have already been offered in evidence as Plaintiff's Exhibit number 10. Will you check those?

BY MR. HIRSCH:

Q. You said you had fifteen thousand members in your union?

A. Approximately.

Q. In the City of Philadelphia?

A. Approximately.

Q. What is the average wage of your members?

MR. SYME:
I object to that, Your Honor.

A. What mill?

THE COURT:
Yes; I—

MR. SYME:
I wasn't allowed to go into that. I am perfectly willing to open up that whole question.

THE COURT:
Gentlemen, I would be glad if you would just state your objections without argument,—

MR. SYME:
Oh, I am sorry, Your Honor.

THE COURT:
—unless the Court desires argument. I think that that is not relevant.

MR. HIRSCH:
I won't press it.

BY MR. HIRSCH:

Q. Testimony was given by the plaintiff, through six or seven mill owners, that on May 6th, 1937 their shop committees requested them to permit their employees to go down to the Apex mill to demonstrate or picket. Did you have anything to do with that?

A. I did not.

Q. Would you have anything to do with such a thing in your usual and ordinary duties?

A. Such a thing as what?

Q. Telling the shop committee to have members of a shop go down to some mill and demonstrate?

A. I would not.

Q. And did you at any time ever advise any mill owner, or the shop committee in any mill where you had a contract, or the members of any mill where you had a contract, that they should come to another mill on a particular day and demonstrate or picket?

A. I did not.

Q. You are sure of that?

A. I am sure of it.

Q. I show you two letters, dated May 21st, 1937 and June 24th, 1937, and—

MR. SYME:

Would you mind letting me see those?

MR. HIRSCH:

I don't mind at all, sorry.

(The letters were shown to counsel.)

BY MR. HIRSCH:

Q. —and ask you whether or not the signature appearing as being William Leader, president, is your signature, and whether or not that is a letterhead of your union?

(The witness examined a letter.)

A. That is not my signature.

BY MR. HIRSCH:

Q. Is it the letterhead of your union?

A. It is a letterhead of my union, that is correct.

Q. Is that a letterhead of your union?

(A letter was shown to the witness.)

A. That is a letterhead of our union.

Q. Is that your signature?

A. That is not my signature.

Q. In other words, there are two letterheads here, dated May 21, 1937 and June 24, 1937, which have at the bottom the name William Leader in handwriting, but you say you didn't sign it?

A. That is correct.

Q. Did you ever see letters like these?

A. I did not.

Q. Isn't it a fact that on May 21, 1937 you addressed a letter headed "Greetings", to some mill in Philadelphia, in which you said as follows: You are hereby notified to have all members—

THE COURT:

Now, if the witness—I don't think you can read the letters into the record if the witness says he didn't sign them.

MR. HIRSCH:

I don't think, Judge Kirkpatrick, that should preclude me letting it go to the jury on the question of whether he did or did not sign it. It is a question of credibility.

THE COURT:

Well, you can prove he did it in some other way. Until there is some proof that he signed those letters or knows something about them I don't think you ought to read the contents of them to the jury.

MR. HIRSCH:

Well, I submit, sir, these letters should go to

the jury on the question of credibility of the witness.

THE COURT:

Oh,—

MR. HIRSCH:

They may or may not believe his testimony.

THE COURT:

—there is no evidence he wrote them yet. If there is some evidence that that is his signature, or you show some person that knows he wrote it, that is quite proper, but you have nothing here but a piece of paper that the witness said he didn't sign.

BY MR. HIRSCH:

Q. Do letters go out from your union over your signature in mimeographed form without your authority, consent or knowledge?

A. Letters that go out with my authority I sign.

Q. Will you answer my question?

MR. SYME:

He answered his question.

THE COURT:

No, no, he didn't.

THE WITNESS:

All right, then, ask me it again.

BY MR. HIRSCH:

Q. Do letters go out from your union over your signature, or what is purported to be your signature, without your authority, consent or knowledge?

A. Well, I don't quite understand that yet. Do

you mean do I send letters out without my signature?

BY THE COURT:

Q. No, what he means is, does anybody else send letters out without your authority or knowledge, and sign your name to them?

A. Not to my knowledge.

BY MR. HIRSCH:

Q. Would your union on its own letterhead send out a letter which purports to be signed by you without at least knowing that it had consent to sign your name to it, or that you had knowledge of it, or that you approved it?

A. I would not know.

Q. These are your letterheads, though, aren't they?

A. They are our letterheads, that is correct. We have them by the thousands.

Q. Did you ever see any mimeographed letters go out to various shops?

A. Did I?

Q. Yes.

A. Yes.

Q. On various matters?

A. On various matters.

MR. HIRSCH:

Have these marked for identification, please, Plaintiff's Exhibits 23 and 24.

(Letter dated May 21, 1937, on the letterhead of the Full Fashioned Hosiery Workers Union of Philadelphia and Vicinity, was marked Exhibit P-23 for identification.

Letter dated June 24, 1937, on the letterhead of the Full Fashioned Hosiery Workers Union of Philadelphia and Vicinity, was marked Exhibit P-24 for identification.)

BY MR. HIRSCH:

Q. Isn't it a fact that during the pendency of the strike at the Apex plant the members of other mills came down and picketed on a regular schedule?

A. I do not know.

Q. What do you know about the activities of your union as president?

A. Well, now, I am ready to go into a full explanation if the Court will allow me on just what I know about our union.

THE COURT:

Well, it is a pretty general question. I see no reason why you should not, if Mr. Hirsch wants it answered.

THE WITNESS:

All right, then,—

BY MR. HIRSCH:

Q. Don't you know—

THE WITNESS:

Can I answer, Your Honor?

MR. SYME:

You asked the question, let him answer it.

THE COURT:

Yes.

THE WITNESS:

The question is, what do I know about our union?

MR. HIRSCH:

Yes, I would like to know that.

THE WITNESS:

I joined our union in 1913 as a member working on the machine. I have been a member of that union since. I have been active on shop committees when in the shops.

In 1930 I was elected vice-president of the union, at a regular election of the membership.

In 1934 I was elected president, and have been president since. It has been my continued job since. I have become a member of the union to try to help to improve conditions in our union. I have worked along in every manner, shape and form I can to get the interest of the working class, to improve their conditions, and also to better their working hours, shorten their hours and improve their pays. I have talked to many meetings of the hosiery workers in the City of Philadelphia. I watched the union grow from a membership—

MR. HIRSCH:

Now, if Your Honor please,—

THE WITNESS:

—of a few hundred people—

MR. HIRSCH:

—I asked him what he knew about the activities of the union,—

THE WITNESS:
Yes, I am telling you.

MR. HIRSCH:
—and I didn't ask him for a stump speech.

THE COURT:
Yes, I think it is going beyond the question. The question is what is your connection with the union activities, and what do you know about the activities that took place in a strike, or something of that sort? What sort of things are brought to your attention?

THE WITNESS:
All right.

MR. SYME:
Your Honor, may I just supplement it by saying it is merely duties as president of the union?

THE COURT:
Well,—

MR. SYME:
I think that—

MR. HIRSCH:
I didn't ask that, Mr. Syme.

THE COURT:
He asked what he knows about—but it has to do not with the history of the union, but what is going on. What he wants to know is whether you know—whether it is part of your official duties or not, but what do you know about things that are being done, particularly in connection with the strike? How much are you consulted?

THE WITNESS:

Well, can I take the year of 1937?

THE COURT:

Yes.

THE WITNESS:

Yes, the year Mr. Hirsch is interested in. At the start of 1937 our union had continued to attempt to organize shops that were not unionized and didn't have conditions that the union shops had and wages which the people earned in the union shops. My job as the president of the Local was to address meetings of workers whenever called on, to find out their grievances, to explain to them the rights under the Wagner Act, the National Labor Act, which consumed much of my time, continually, meetings in small halls, or meetings that were called at the union, was part of my job, night work, day work, and Saturday work; and when we would come to a situation where a group of people felt that they wanted to better their conditions and wanted a representative to go in and present their case, my job as president of the union was to represent those workers, once I was chosen. I would meet with management, which I had on several occasions in different shops, after the situation was explained, and if there was no satisfactory answer the workers would vote on the question of a strike or any other action they may see fit. If a strike was declared I would explain to them their rights under a strike, their rights under the Wagner Act, to picket peacefully at all times, and so on.

After a strike was declared I would continue

to attempt to start negotiations with the manufacturer with the hope of ending the strike. I had the authority by my union to conduct negotiations, to take up grievances of workers in union shops, to better at all times their conditions, and to go along with the idea of getting new annual contracts, better contracts than the year we had before. Mine is a question of organization and authority to take up grievances and to declare strikes if the workers so elect to declare one, and settle grievances after they go into impartial chairman hearings, which we had on many occasions with our various agreements, and which take up much of my time preparing cases, and then arguing before an impartial chairman, negotiating with manufacturers on getting agreements, and individual agreements which we had up to the last agreement that run out.

Now, that takes up quite a bit of my time. I have no authority with the finances of the union, and that is why I perhaps appear that I don't know much about it, which is correct. My time is entirely taken up with settling grievances, negotiating agreements for fifteen thousand hosiery workers.

BY MR. HIRSCH:

Q. Now, then, Mr. Leader, I am going to ask you to answer my question, as to what I want to know. What do you know about what goes on during the pendency of a strike? Do you have anything to do with the picket lines, or do you know that there is such a thing as a picket line around a mill?

A. My answer to that is that I hold a meeting

of the workers any time that our union or they declare a strike, I explain to them their rights under the law and under the Wagner Act, when a strike is declared I explain to them their rights to picket. I tell them at all times their constitutional right is that they can picket whenever they so desire, but at no time does the union ever order them to picket.

Q. So that these letters on union letterheads, with your signature purporting to be on it—

MR. SYME:

I object to that.

THE WITNESS:

It isn't my signature.

MR. SYME:

I object to the question. The letters have not been proved. There is no evidence as to-

MR. HIRSCH:

We will prove them.

BY MR. HIRSCH:

Q. Mr. Leader,—

MR. SYME:

Well, when you prove them you can ask the question.

THE COURT:

I think he—

BY MR. HIRSCH:

Q. Look at the lower right-hand corner. The initials on this letter dated June 23, 1937, marked Plaintiff's Exhibit 24, are WL, in large type, and mk, in small type. What does "WL" stand for?

A. I did not sign this letter. I know nothing about it.

Q. Well, now, letters which you sign do have "WL" on the bottom, do they not, in the lower left-hand corner?

A. I do not know.

Q. Did you ever see the signature "WL" and the stenographer's signature—

MR. SYME:

If Your Honor please, I object—

MR. HIRSCH:

Oh, Mr. Syme, you can—

MR. SYME:

Now, Mr. Hirsch,—

MR. HIRSCH:

All right, go ahead.

MR. SYME:

Mr. Leader has testified to the fact that he did not sign the letter and he knows nothing about the letter. If Mr. Hirsch wants to produce other competent testimony to prove he did sign the letter that is his privilege, but he is asking the same question so many times—

MR. HIRSCH:

I am asking a different question.

MR. SYME:

He has answered it ad nauseam.

MR. HIRSCH:

If Your Honor please, I am going to find out what happens when he writes letters and what these initials mean.

BY MR. HIRSCH:

Q. I am asking you, when letters go out on the union stationery, on which your signature does in fact appear, do I understand you don't remember, or you have never seen your initials in the lower left-hand corner?

A. When a letter goes out with my signature on I read the letter and sign it. I do not know what is below the signature.

Q. In other words, the initials that appear in the lower left-hand corner, you have never seen those before?

A. I would not say I have not seen initials in the lower left-hand corner.

Q. Have you ever seen your initials in the lower left-hand corner?

A. I would say perhaps I have and perhaps I have not. I do not recall if I specifically noticed at any time my initials in the lower left-hand corner. I am concerned with the letter and with what I signed.

Q. And if it was your letter and your initials appeared they would be "WL" as in that letter, wouldn't they?

A. If my initials appeared they would be WL, or WML, either one.

Q. All right. Whose initials are the small letters, "mk"? They are the stenographer's who wrote them, are they not?

A. I do not know.

Q. How many office girls have you?

A. I have a girl by the name of Elsie Rau—

Q. I am talking about '37, now, not now. How many office girls did you have at that time, and who were they?

A. At that time?

Q. Yes.

A. Had Mary McCourt.

Q. Mary McCourt. How do you spell that?

A. M-c C-o-u-r-t.

Q. All right.

A. Elsie Rau, R-a-u, Helen Lafferty, Alice Haney, Mildred Kelly.

Q. Mildred Kelly's initials are mk, aren't they?

A. I believe so.

Q. And they are the initials that appear in the lower left-hand corner of that letter. Look at it.

(The letter was shown to the witness.)

A. That is the initials that are in the lower left-hand corner, that is correct.

BY MR. HIRSCH:

Q. Does she take stenography? Does she type? Is she a typist?

A. She—

MR. HIRSCH:

Now, wait a minute, Mr. Syme, don't try to save the witness.

BY MR. HIRSCH:

Q. Is she a typist?

MR. SYME:

Oh, yes, she is a typist, we will admit. She is Jack Kelly's niece, if you care to know. That is some more information for you. This cross examination doesn't lead anywhere, Your Honor.

THE COURT:

Now, just a minute. We won't have any more

demonstrations from the audience. We will have no laughter. You will all be removed from the court room if this continues. Do you understand? There is no reason at all to keep you in here. We will send you right out if that goes on.

MR. SYME:

Your Honor, it is admitted, apparently there is some girl who took it, and apparently there is some girl who put these initials on, but Mr. Leader has testified to the fact he did not sign the letter, that he doesn't know about the letter. Now, I don't see what purpose all this cross examination is leading to.

MR. HIRSCH:

It is leading to the fact that I will discredit the witness and his testimony that he never ordered any picket lines down at the Apex plant by letters which were sent out over his signature.

MR. SYME:

Your Honor, I object to that being said before the jury. Mr. Hirsch is trying to get in indirectly what he cannot get in directly.

MR. HIRSCH:

No, I am not. I am going to get it all directly.

THE COURT:

Well, now, gentlemen, the witness, it seems to me, has been fully enough cross examined on the point. If you have testimony that it was his letter you are fully—

MR. HIRSCH:

I am getting it now, Judge Kirkpatrick. I found out who "mk" is, and I intend to subpoena her.

THE COURT:

Surely.

MR. HIRSCH:

I am asking him if she is a stenographer.

THE COURT:

He says so.

MR. HIRSCH:

No, Mr. Syme said it. He didn't say so. Do you admit that, Mr. Syme?

MR. SYME:

I admit that.

BY MR. HIRSCH:

Q. Is she still in your employ?

A. She is not.

Q. Where does she live, do you know?

A. I don't know. You could probably find out from our office records the address when she worked there.

Q. Do you know her parents' names?

A. I do not.

Q. I show you this letter of May 21, 1937, in the lower left-hand corner of which appear the initials "j. b.", followed by "m. c." Doesn't that indicate that that letter was dictated by Joseph Burge, who was the vice-president of your union, and who signed that letter?

(The witness examined the letter.)

A. I would not know.

BY MR. HIRSCH:

Q. And don't the initials "m. c." stand for Miss McCourt?

MR. SYME:

Your Honor, if there is a question of Joseph Burge, Joseph Burge—

THE COURT:

Well, it does seem so futile to ask the witness whether Joseph Burge's initials are j. b., or Mary Kelly's initials are m. k. That is obvious. We all know that. What is the use of wasting time with that? If you know, go ahead and prove it, it is perfectly proper, any testimony you have on point is all right, but we have spent a great deal of time on the question of whose initials are on the—

MR. HIRSCH:

Well, only in this way have I found out who wrote the letters, and I intend to bring those persons in.

THE COURT:

I understand.

BY MR. HIRSCH:

Q. What is McCourt's first name, did you say?

A. Mary.

Q. Is she still in your employ?

A. She is.

Q. Up at headquarters?

A. She is.

Q. All right. Yesterday you testified there were twenty-two sit-down strikes in the City of Philadel-

phia. I now ask you whether or not you know of any mill at which a sit-down strike was conducted in the City of Philadelphia in 1937 in which hosiery workers were involved where the owner of the mill was permitted to manufacture and ship his merchandise during the period of the sit-down strike.

A. I know nothing about that.

MR. SYME:

Your Honor, I ask that that question be stricken from the record.

THE COURT:

I will deny the motion.

BY MR. HIRSCH:

Q. Now, let's review what happened in 1937. You sent letters to all of the manufacturers in the City of Philadelphia with whom you did not have closed shop agreements enclosing a copy of a closed shop agreement and asking them to agree to sign it, did you not?

A. Approximately all of them.

Q. And then you endeavored to confer and persuade them to sign it?

A. I endeavored to negotiate with them.

Q. When your negotiations failed in twenty-two cases sit-down strikes occurred, did they not?

A. I would say that in approximately twenty-two cases where negotiations failed strikes were declared.

Q. And in those cases the union did declare a strike, did it not?

A. With the consent of the workers involved, correct.

Q. And in those cases the strike that took place happened to be a sit-down strike?

A. I would say in most cases that what is commonly classed as a sit-down strike come about. We would declare the strike, not a sit-down strike.

Q. Now, then, once a sit-down strike gets under way your union supplies food to the sit-downers, cots and blankets and pillows, if necessary, strike or relief benefits during the period of the sit-down strike, and medical service, does it not, as has been admitted?

MR. SIMONS:

Now, just a second. Do you want to step up here a minute? May we see you a moment at side bar?

(Discussion at side bar.)

MR. HIRSCH:

What was the last?

(The question was repeated by the Reporter, as follows:

"Q. Now, then, once a sit-down strike gets under way your union supplies food to the sit-downers, cots and blankets and pillows, if necessary, strike or relief benefits during the period of the sit-down strike, and medical service, does it not, as has been admitted.")

A. To the best of my knowledge, in the Apex I testified that that was so. On the other shops I stated I did not know.

BY MR. HIRSCH:

Q. So that you as the president of the union in charge of all strikes didn't know that your union

during the period of May 6th, 1937 until July 27, 1937 spent twenty-three thousand dollars for food in your strike kitchen which went to the sit-downers?

A. I knew that they spent money. Again, let me say that if our records show something and you show me the records I will admit it. I am not trying to disprove that.

Q. But you said you didn't know whether this food was supplied to other mills other than Apex?

A. That is correct. I knew it was supplied to mills.

Q. All right.

A. I do not know what mills.

Q. All right, but it was supplied to other mills?

A. To the best of my knowledge.

Q. Now, then, after the sit-down strike has been in progress you continue your negotiations with the management, don't you?

A. After—

Q. You, personally.

A. After the strike is in progress I always try to continue negotiations.

Q. Yes.

A. Correct.

Q. And in those twenty-two cases where sit-down strikes were in progress your demands were for a closed shop, were they not?

A. That was part of the demands, that is correct.

Q. And you continued your negotiations to obtain that with management, and finally did in every instance, did you not?

A. Among other things I believe that is correct, that every shop we signed up had a closed shop clause in it.

Q. And the sit-down strikes were of a different duration in each mill, were they not, some for a few days, and some for weeks, and some for months?

A. These strikes varied, that is correct.

Q. What happened to the sit-down strike once you union signed up with management?

A. When management would sign with the union we would in most cases come up and in the presence of management notify the workers involved that the strike had been concluded—

Q. And the sit-down—

A. —and the agreement signed—

Q. —would end.

A. —and the strike would be officially declared off.

Q. And the sit-down would end? Did the sit-downers continue on the premises once you had gotten your goal, attained your goal? Do you know of any instance where they continued on the premises as sit-downers?

A. I know of no instance where a strike was concluded that the people did not go back to work immediately.

Q. Including the sit-down strikes?

A. I am talking of all strikes.

Q. And, therefore, in twenty-two instances in Philadelphia in the year 1937 after a sit-down strike had been in progress your union was able to get a closed shop agreement and reap the benefit from that sit-down strike, wasn't it?

A. In at least twenty-two cases where there were strikes and there were signed contracts concluding the strike, the strike was over and the workers and the union both benefited, and the employer.

Q. You spoke of a meeting yesterday—strike

that. Yesterday you spoke of a meeting which was held on May 5th, the day before the sit-down strike at Apex, with some of the Apex employees. Where was that meeting held?

A. At the north—northeast corner of Fifth and Butler.

Q. Fifth and where?

A. Butler.

Q. How far is that from the mill?

A. Approximately three squares.

Q. And who was elected chairman of the workers at that meeting?

A. William Etter.

Q. And how many were present at that meeting?

A. Well, we didn't count them. I would estimate, roughly, approximately a hundred or more.

Q. And at that meeting it was voted to call a strike at the Apex plant the following day if management did not sign your contract?

A. It was voted that unless management would meet with the union officials and the committee that a strike would be declared.

Q. Was that the first time that you or any officer of the union had been authorized to call a strike at the Apex plant if they didn't sign?

A. By the workers?

Q. Yes.

A. Correct.

Q. And was that the first time you had been authorized to call a meeting at the Apex plant by anyone?

A. Call a meeting?

Q. A strike.

A. I was authorized by the executive board to

declare a strike at the Apex shop whenever I seen fit.

Q. How many members according to your union's records did you have among the employees of the Apex Hosiery Company on your books prior to May 6th and on May 6th, 1937?

A. I do not know.

Q. Would it surprise you to know that an examination of your books by a person appointed by this Court disclosed that you had exactly seven members, and I will name them? Would that surprise you?

A. It would not interest me at this time, or then.

Q. Would it surprise you?

A. I do not know if it would surprise me or not. I never give it any thought.

Q. Would you say that was not a fact?

A. I would not say it was not a fact, no.

MR. HIRSCH:

I call on the union to produce pursuant to the subpoena that I have issued on them all membership cards pertaining solely to membership in this union among Apex employees on or prior to May 6th, 1937, and the names of those persons.

MR. SIMONS:

May I just say that Mr. Hirsch's subpoena called for all the membership cards, and it is an index system, that stands about this high (indicating), and we would have to have a couple of trucks to bring it down. Mr. Hirsch told me that it wasn't necessary to bring it down.

THE COURT:
All right.

MR. SIMONS:
If he has copies or excerpts from it—

THE COURT:
I wonder if it is necessary. What is the importance of it?

MR. SIMONS:
I don't know.

MR. HIRSCH:
I think this is very germane to the issue, a sit-down strike being called by a union when according to their records they had eight persons on their rolls,—

THE COURT:
Well, but what does it show—

MR. HIRSCH:
—as being members.

THE COURT:
As to the authorization? It doesn't show anything. You are going to argue from it that the union acted unreasonably, and Mr. Syme is going to reply that is the way shops are organized if they are non-union shops. Now, we are not going to get anywhere by that and I don't think it goes to the issue involved here.

MR. HIRSCH:
Well, may I see Your Honor at side bar—

THE COURT:
Yes.

MR. HIRSCH:

—and give you the reasons why I think it is germane?

THE COURT:

Surely.

(Discussion at side bar.)

MR. HIRSCH:

May I put these names on the record?

MR. SIMONS:

Just enter our objection.

MR. HIRSCH:

According to the information obtained from the records of the union by the representative appointed by the Court, the following persons were members of the union during the period preceding May 7, 1937, and were the only employees of the Apex plant who were such members, on May 6th, 1937:

Clifford H. Ferber, Betty Adams (now Werger), L. Geoghegan, J. Gladen, E. Morris, Charles Lehall, Ella Schultz (now Schubert), Peter Wolfert.

BY MR. HIRSCH:

Q. I believe you testified yesterday, Mr. Leader, that after the crowd had broken into the mill and all of the events which you related had taken place, you then left the mill about 4:30 and made a speech over a loud speaker on the sound wagon?

A. At the request of Mr. Meyer, that is correct.

Q. And that as a result of your speech, or as a result of the rain, you didn't know which, the crowd which was then outside immediately dispersed?

A. That is correct.

Q. How many were outside at that time?

A. I would estimate at the corner where I come out, perhaps three or four thousand people, at that corner.

Q. Who were you to tell them to go home,—

A. That is what I asked Mr. Meyer.

Q. —and why did they go home when you told them, if it wasn't for the fact that you brought them there and controlled them and led them, and in every way supervised everything that went on that afternoon?

A. As I said yesterday, my personal opinion is, I think it was the rain.

Q. You made this speech on the table at the request of Mr. Meyer, did you not? Did he ask you to get up on the table and address the mob that was inside his mill?

A. He did.

Q. You wouldn't have gotten up on his table without him telling you, would you?

A. That is correct.

Q. It was after the mob had broken into the mill and the place had been laid waste in the office, was it not?

A. It was after we had the meeting with Mr. Meyer in his office.

Q. And your meeting was after the time the crowd broke in and smashed the office furniture and in every way turned the place upside down, was it not?

A. The place was in great disorder when I went in. that is correct.

Q. And it was at Mr. Meyer's request that you got up on the table and addressed these people—

A. That is correct.

Q. —and quieted them?

A. I did not quiet them.

Q. And it was at his request that you made this speech that you have related?

A. That is correct.

Q. And among other things, after the place had been laid waste and the mob had run through, and people, as you have heard testify here, were sent to the hospital with injuries, you then made a speech in which you asked them not to smoke?

A. That is correct, I made a speech in which I asked them not to smoke.

Q. You wanted them to be very considerate of the plant at that time, didn't you?

A. It was Mr. Meyer's request.

Q. And was it Mr. Meyer's request that on June 10th, 1937 and on June 22nd, 1937, one hundred and thirty-four machines were smashed, causing damage as has been related, costing sixty-seven thousand dollars to repair and replace, was that his request?

A. I know nothing about that.

MR. HIRSCH:

That is all.

THE COURT:

Any redirect? That is all, Mr. Leader.

THE COURT:

We will recess for ten minutes.

(Recess at 11:10 o'clock A. M.)

MR. HIRSCH:

I am through at the moment, but I ask leave to recall Mr. Leader for further cross examination after I have gotten together other information—

THE COURT:

Well, if it appears proper.

MR. HIRSCH:

—along the same line that I have already been questioning him.

THE COURT:

Well, I know, but we don't want to drag it out too much. If it is a proper occasion I will permit it.

MR. HIRSCH:

All right.

THE COURT:

I won't make any commitment about it.

MYLES HIGGINS, having been duly sworn, was examined and testified as follows:

Direct Examination

BY MR. SYME:

Q. Mr. Higgins, you are a member of the Philadelphia Bar?

A. Yes, sir.

Q. You are a member of the New York Bar, is that right?

A. Yes, sir.

Q. You have been practicing law both in Philadelphia and in New York for a number of years?

A. Nearly forty.

Q. Nearly forty years. You are not in any way associated with Branch 1 of the American Federation of Hosiery Workers, or with any of the defendants, are you?

A. No, sir.

Q. In any capacity whatever?

A. No, sir.

Q. Either as counsel or in any other way?

A. No, sir.

Q. Mr. Higgins, were you present in front of the Apex Hosiery mill on May 6th, 1937?

A. I don't recall the exact date, but I was there at the time that these troubles happened. I couldn't identify the date, but I was there at the time that the plant was broken into.

Q. Mr. Higgins, what time did you arrive in front of the mill?

A. As near as I can recall, around one-thirty in the afternoon.

Q. How did you get to the mill? How is it that you were around there?

A. I happened to be in that neighborhood that morning and I heard that there was trouble at the mill and that they were picketing, that the strikers were picketing the mill. I had never seen anything just like that in my life. I just thought as I was in the neighborhood I would go over and look it over, as a matter of curiosity, purely, so I went over.

Q. And you got there at about 1:30?

A. About 1:30, and there were probably two or three hundred people there at that time, as near as I could estimate.

Q. Mr. Higgins, suppose you tell us in your own way exactly what you saw.

A. Well, as time went on crowds of people came from all directions, until about three o'clock, or an hour or so after I got there, there were thousands of people in the vicinity, so much so that the street, the streets, the two streets that I could see—I was at the corner, at the north—at the southwest corner of Fifth and the cross street, I don't know just what it is, just across from the north side of the mill, and the people were coming from all directions, and the whole street was filled with people, not only the sidewalks, but the pavement all the way across, and when a trolley car came along they had to part the people, the trolley car had to just creep along to get through.

Q. Did you see Mr. Leader there at any time?

A. I did, yes.

Q. About what time, do you remember?

A. Well, now, I don't know just exactly what time the doors of the mill were broken into, but it was about a half an hour before that that I saw Mr. Leader.

Q. Well, how did you come to see Mr. Leader?

A. Well, I was talking to a man in the crowd there, and he said, "There is Leader, the head of the union".

Q. And where was Leader at the time?

A. Leader was then right below the doors of the mill on Fifth Street, on the—he was on the pavement talking to some people, and this young man said, "Would you like to meet Leader?"

I said, "Yes, I would like to meet him."

He said, "Come on, I will introduce you to him", and I went over and talked to Mr. Leader.

Q. Yes.

A. For about fifteen or twenty minutes, maybe longer, talked about the condition there, and I told him—

MR. HIRSCH:

Now,—

BY MR. SYME:

Q. Was Leader—

MR. HIRSCH:

—don't tell us your conversation.

THE WITNESS:

All right.

BY MR. SYME:

Q. Was Leader leading anybody at the time, agitating anybody at the time?

A. No.

Q. He was standing with you very leisurely and having a conversation—

A. That is all,—

Q. —for a period of fifteen—

A. That is all he was doing.

Q. —or twenty minutes?

A. That is right. I saw—I then saw about that time one of these things they call a sound wagon.

Q. Yes.

A. Come up, and it stopped on the cross street above the mill, and somebody in there was talking, I don't know who it was, I couldn't see, but there was conversation coming from that sound wagon, and as I recall what they were saying was, they were telling the crowd to be peaceful and not have

any—any disturbance, make any disturbance. That was the burden of his talk.

Q. Mr. Higgins, were there any police there?

A. Oh, yes, yes, in front of the door of the mill were about a dozen or fifteen policemen, were standing shoulder to shoulder in a circle up on the steps. There are four or five steps leading up to the door of the mill, and these police were lined in front of the door in a semi-circle, and then about a half an hour before the outbreak—

Q. Were there—pardon me, I don't want to interrupt you, but were there any other police aside from the police—

A. Oh, yes.

Q. —around there? Were there mounted police.—

A. Mounted police came along—

Q. —motor cycle police?

A. Mounted police came along and attempted to ride the crowd down.

Q. What effect as far as you observed did that have on the crowd?

A. Well, it infuriated them. The crowd was peaceful up to the time the police came. When the police came they attempted to ride them down, and about fifteen minutes after that some motor cops came along with side cars, and they didn't go on the trolley tracks, where they could have gotten through, but they rode right into the crowd, and that infuriated the crowd; and it was then—it was after the police came that the brick throwing commenced.

Q. Now, where was Leader when the brick throwing commenced, as you put it?

A. He was standing quietly talking to some friends of his, and talking to me.

Q. You saw him—

A. Yes, I was talking to him.

Q. —when you—you were talking to him?

A. I was talking to him.

Q. Yes. Did you see Leader throwing any rocks?

A. No, he didn't do anything.

Q. Did you see him direct anybody to throw rocks?

A. He did not.

Q. All right. Now, you say he stood with you for about fifteen or twenty minutes, and then what happened?

A. Well, somebody came along—I might preface the remark that when the—there were some bricks or stones thrown at the windows of the building, and they were thrown mostly from the west side of Fifth Street. The police undertook to arrest the throwers of the bricks. Of course, nobody could tell who threw them, I was standing right there, and you couldn't tell. They were mostly thrown when a trolley car came along and was going slowly through the crowd, then from the other side of the trolley car, then the bricks came, the missiles. The police went down alongside the building and undertook to arrest some of the men there, and when they did the crowd wouldn't stand for it, they just simply pushed the police aside and took the prisoner away from them, and that infuriated the crowd. My judgment at the time was that it was the police that caused the trouble, in endeavoring to arrest people as they did. That is just my private opinion of what happened, but I told Mr. Leader that some-

thing ought to be done about it, that that crowd would get out of control.

He said, "Yes, I believe it will," and he said, "I am going to see if I can talk to the management of the mill and see if we can't do something about dispersing the crowd", and he went up to the door of the mill, and there was a grating there outside the glass, and they opened the glass inside and somebody talked to Leader.

Q. Now, you couldn't hear that conversation?

A. I couldn't, no.

Q. You were too far away?

A. I was down on the pavement, I couldn't hear what was said, but at any rate, the door was slammed shut again. Leader came back and said they wouldn't let him in.

Q. And then what happened, Mr. Higgins?

A. Well, it is hard to describe just what happened, the—

Q. Well, how long did you stay there after that?

A. Oh, yes—I stayed there for quite some time, but somebody came up to Leader and said that—that—

MR. HIRSCH:

Now, wait a minute, I object to conversations outside of our presence.

BY THE COURT:

Q. Well, did you hear it?

A. I was there, I heard it.

Q. All right.

A. I heard it.

THE COURT:

Well, that is all part of the res gestae, then. All right.

MR. HIRSCH:

All right.

A. (Continued) This man came up and said that the—that the police or somebody were beating up their fellows down below.

BY MR. SYME:

Q. Yes?

A. And he said, "Bill", he said, "you better come down", so Leader went down to the lower end of the building, down along Fifth Street, and I then crossed to the west side, because the crowd was milling and getting out of control, and I looked for some violence there and I just went to the other side for my own protection.

Q. Yes.

A. I didn't want to be in it.

Q. And you left the scene after that?

A. No, I still stayed. I saw the doors—the doors torn off the hinges, and I saw the whole thing, saw it all.

Q. Where was Leader? Was Leader there when the doors were thrown off?

A. No.

Q. Leader wasn't there?

A. Leader was down—had gone down to the lower end of the building, down on Fifth Street. He was nowhere near when this—when they rushed the doors and pushed the officers aside and tore off the doors.

Q. And did you see anything happen after that?

A. I saw thousands of people rushing into the building, that is all I saw, and then there was a rain, a rainstorm pending, and I was—

Q. You were there when the rainstorm was pending?

A. No, I left before the rain came.

Q. Oh, you left before the rainstorm?

A. Yes.

Q. You remember, though, there was a pretty good rain that day, wasn't there?

A. It rained heavily that day, yes.

MR. SYME:

That is all, Mr. Higgins. Cross examine.

Cross Examination

BY MR. HIRSCH:

Q. Now, Mr. Higgins, after you arrived at the scene where did you stand?

A. I was standing on the southwest corner of Fifth Street and whatever that cross street is, I don't know.

Q. Luzerne?

A. I never knew what the street was.

Q. Opposite the main entrance of the plant?

A. Right opposite the main entrance is where I stood.

Q. Well, you were there in the beginning, because you just said you crossed to the west side. In the beginning you were on the east side?

A. No, I was on the west side first. I crossed over to the east side when I was introduced to Mr. Leader.

Q. Oh, that is what I mean. You started on the west side, which is across the street from the mill?

A. Yes.

Q. And crossed over to the east side, which would put you right in front of the entrance to the mill?

A. Well, a little south of it, not right in front of it; little south of it.

Q. Now, at the time—and check me if I am incorrect, I am trying to recall what you said—at the time you were on the east side of the street next to the corner of the mill there or near the corner of the mill you saw this huge crowd of people, as you said, thousands, come from every direction?

A. They were accumulating from all—coming from all sections.

Q. And when you saw Leader the crowd had already accumulated in large numbers?

A. Oh, yes, there were thousands of people there then.

Q. And likewise you testified that while you were on the east side bricks were being thrown from the west side against the building?

A. Well, I guess—I couldn't tell you whether they were being thrown when I was on the east or the west side. Bricks were being thrown and some windows were broken, there is no doubt about that.

Q. But it was the bricks that were being thrown which made you cross from the east side to the west side?

A. No, I wouldn't say so.

Q. Well, what would you say?

A. Well, the crowd was—was milling around

and there was trouble with the police there and it looked to me as if there was going to be violence, and I just thought I better get out of it as far as I—protect myself. Besides, Mr. Leader had gone and I had no—no reason to stay there.

Q. Now, how big a crowd was there there when you were talking to Mr. Leader?

A. Oh, there were thousands—I couldn't estimate, but the whole streets were filled. All the streets were filled with people.

Q. And at that time the traffic was pretty well blocked up?

A. Yes.

Q. And had the police begun to disperse the traffic before, during or after the talk with Leader?

A. The only thing—the police couldn't do anything with the crowd. They did try to arrest for the brick throwing, at least, that is what I thought, they were trying to get the fellows that were throwing the bricks.

Q. Well, you said the motor cycle police came?

A. They did, they tried to ride the crowd down.

Q. You were then on the east side?

A. I was on the west side then.

Q. Yes.

A. On the west side.

Q. And while you were on the east side and while you were talking to Leader there were thousands of people milling around?

A. Yes, sir.

Q. And under those conditions you had a leisurely conversation with Mr. Leader, lasting fifteen or twenty minutes, is that correct?

A. Yes, sir.

Q. You got there at one-thirty and you said there were two or three hundred people. When this huge crowd of persons began coming from every direction that was approximately two-thirty, was it not?

A. Around that time. I didn't keep any tabs on the time, exactly. I am just using my best recollection.

Q. Well, would you say about an hour after you got there?

A. About an hour, hour and a half.

Q. And they came down Fifth Street and from every direction, did they not?

A. Every direction, yes.

Q. There are hosiery mills around there, aren't there?

A. I don't know, really.

Q. Oh, you don't know that neighborhood there?

A. I don't know. I don't know the neighborhood.

Q. Do you know that the Courtland mill is several blocks north on Fifth Street?

A. I don't know. I don't know that neighborhood at all, sir.

BY MR. SYME:

Q. Where do you live?

MR. SYME:

Oh, I am sorry. I thought you were through. I am very sorry.

BY MR. HIRSCH:

Q. Now, how was it, Mr. Higgins, that with that huge crowd of persons so thickly gathered around the corner of the building you were able to state,

if I understood you correctly, that Leader left you and went to the south end of the building? You couldn't see where he went, could you?

A. Well, I could see him going down the street, yes, I could see him going.

Q. Well, wasn't that after this police infuriation had begun and the crowd became unruly and there was a huge crowd in the street, as you say?

A. Well, there was crowds there, of course, but you know, you know even the strikers were parading then, you know, they had banners and were parading around the building, and it was possible for a man to walk down, it wasn't so densely crowded that he couldn't walk down the sidewalk.

Q. And you saw bricks being thrown up against the windows of the mill, did you not?

A. A few, yes, not many.

Q. You saw windows being broken?

A. A few, yes, down at the lower end of the mill.

Q. Didn't you see but a few windows broken?

A. Not so many.

Q. At whom were the bricks being thrown, at the building or at the pickets?

A. I don't know; at the building, I suppose, because they went up fairly high.

Q. So as a result of the police arriving on the scene where there were thousands of people you would have us understand that the crowd began throwing bricks against the building in protest or because they were infuriated at the police, and then rushed the building and thousands rushed through and destroyed the place bec: the police infuriated them, is that right?

A. I wouldn't have you believe anything, sir. I am simply telling you what I saw.

Q. Well, is that your understanding of what happened?

A. Not exactly, no.

Q. Well, you said the police infuriated the crowd and then they subsequently broke into the building, didn't you?

A. That was my opinion, that that is what really caused the outbreak.

Q. Then I am asking you, it is therefore your opinion that because the police infuriated the crowd outside that they decided to first throw bricks against the building and then rushed the front door, sweep into the place, as you said, in thousands of numbers, lay the place waste, and in that way express their indignation at the police? Is that your understanding or is that your opinion as to what happened?

A. No, that is yours. That isn't mine.

Q. Well, then, what is your opinion? What connection are you making between infuriation of the crowd and the fact they broke into the building and laid it waste and put two hundred sit-downers in there?

A. I am not making any conclusions at all, sir.

Q. But you did make a conclusion,—

A. I gave you—

Q. —that the police infuriated the crowd?

A. I gave you my opinion, that is all, for what it is worth. If you don't want it you don't have to accept it.

Q. I didn't ask for your opinion.

A. Well, I don't—

Q. I am asking whether it was your opinion that the crowd broke into the building because they became infuriated from the police?

A. I don't know. I am unable to say.

Q. Now, if I understand your testimony, if I recall it correctly, you said that the crowd was peaceful until the mounted police came, and that infuriated them, and then the motor cycle police came and that infuriated them, is that correct?

A. That is correct, yes.

Q. And then you said the brick throwing began, is that correct, chronologically?

A. Impossible for me to say just when the brick throwing began. It happened intermittently. It wasn't any concerted barrage of bricks, it just —every once in a while somebody would throw a brick.

Q. Was there brick throwing after the mounted police had infuriated the crowd and after the motor cycle police had infuriated the crowd?

A. Yes, sir.

Q. And I am correct in my recollection when I say that you testified that the brick throwing began and you were talking to Leader quietly when this commenced, which in chronological order of events would be after the crowd was infuriated by the police; you were standing there talking quietly to Mr. Leader?

A. Yes.

MR. HIRSCH:

That is all.

Redirect Examination

BY MR. SYME:

Q. Just one question; where do you live, Mr. Higgins?

A. I live in Mt. Airy.

Q. You live in Mt. Airy.

MR. SYME:

Does Your Honor want to go on now, put another witness on?

THE COURT:

Yes, surely, go right ahead.

MR. SYME:

Mr. Etter.

WILLIAM F. ETTER, sworn.

MR. HIRSCH:

Is Mr. Higgins still here?

MR. HIGGINS:

Yes.

MR. HIRSCH:

May I recall Mr. Higgins for one further question which I meant to ask?

THE COURT:

All right. Where is Mr. Higgins?

MYLES HIGGINS, recalled.

Recross Examination

BY MR. HIRSCH:

Q. I believe you said that after the crowd became unruly and the police had endeavored to make arrests of several people who were throwing bricks, Leader then went up to the door to talk to the management about doing something toward quieting the crowd, is that correct?

A. Yes.

Q. And as far as you knew that was his purpose for going up to the door?

A. I couldn't hear, overhear the conversation at all except what he said—

Q. What he said to you?

A. Yes.

Q. So as far as you know, when he went up to the door of the plant it was to talk to the management about quieting the crowd outside?

A Yes.

MR. HIRSCH:

That is all.

WILLIAM F. ETTER was examined and testified as follows:

Direct Examination

BY MR. SYME:

Q. Mr. Etter, you are an employee of the Apex Hosiery Company, is that right?

A. That is right.

Q. How many years have you been working at the Apex Hosiery Company?

A. Close to seven years.

Q. Close to seven years. You are a member of Branch 1 of the American Federation of Hosiery Workers?

A. That is right.

Q. And you joined the union when?

A. Some time approximately a week or maybe a little more to May 6th.

Q. What is your job in the mill?

A. I run a half job on a legger.

Q. On May 6th, 1937 or immediately prior thereto you were a helper, is that right?

A. That is right.

Q. Were you present at the meeting of the Apex Hosiery Workers on May 5th, 1937?

A. I was.

Q. You were, and was Mr. Leader present at that meeting?

A. He was.

Q. As a matter of fact, the group was addressed by Mr. Leader, is that right?

A. That is correct.

Q. About how many people would you say were at that meeting?

A. I don't know exactly; approximately one hundred to one hundred and fifty.

Q. You would say approximately from one hundred—

A. To one hundred and fifty.

Q. The hall was filled?

A. Right.

Q. Full. Was this in a hall or was it outside?

A. No, it was in—above a cafe and restaurant at Fifth and Butler, on the second floor.

MR. HIRSCH:

I am sorry, I thought Leader said it was outside.

MR. SYME:

He said it was at Fifth and Butler, but that wasn't outside.

MR. HIRSCH:

All right.

MR. SYME:

It was in a hall.

BY MR. SYME:

Q. And there were Apex workers there, is that right?

A. That is right.

Q. As far as you knew did all of them sign application blanks?

A. Every one.

Q. Every one had signed an application blank. Does the signing of an application blank of the hosiery workers union make you a member?

A. No.

Q. What else do you have to do in order to be a member of the hosiery workers union?

A. The main thing to become a member, you must take the oath.

Q. You must take the oath. And, therefore, the mere signing of the application blank would not place you as a member of the union, would it?

A. In the files, no.

Q. Now, at that meeting the Apex hosiery workers spoke to Leader as the representative of the union, is that right?

A. That is right.

Q. When I say the union, I mean Branch 1 of the American Federation of Hosiery Workers. Do you remember what grievances were presented to Leader at the time?

MR. HIRSCH:
Objected to.

MR. SYME:
I will withdraw that question.

BY MR. SYME:

Q. Mr. Etter, what did you ask Mr. Leader to do?

MR. HIRSCH:
Objected to, by way of conversation.

MR. SYME:
Oh, not by way of conversation—

BY MR. SYME:

Q. What, when I say "you", I mean what did the workers—

THE COURT:
Go ahead.

BY MR. SYME:
Q. —what did the Apex hosiery workers ask Mr. Leader as the representative of the union to do,—

THE COURT:
I will allow it.

MR. HIRSCH:
All right.

BY MR. SYME:
Q. —Mr. Etter.
A. Well, they—the first thing they asked him is what their rights were under the Wagner Labor Act. They wanted to know whether they could have a union in the mill and have a voice, that they can discuss their grievances.
Q. What did they want to discuss their grievances for?
A. Well, there was helpers making small salaries and knitters making large salaries and we were doing all the work.
Q. What were you making?
A. Fifteen dollars a week.

MR. HIRSCH:
Now, I asked that of Mr. Leader, what these people were making, and it was objected to.

MR. SYME:
All right, you will be able to cross examine him—

MR. HIRSCH:

All right.

MR. SYME:

—if you want to.

THE COURT:

It is entirely unimportant to this issue.

MR. SYME:

All right, I am not going into this, Your Honor.

BY MR. SYME:

Q. As a result—or, rather, this meeting was concluded by what time?

A. Somewhere around midnight.

Q. Somewhere around midnight, and what instructions did you give to Mr. Leader, if any, or what decision did you adopt?

A. Well, the Apex workers talked it over and they decided that we would go in to work at two-thirty the following day and Mr. Leader would come into the office from the outside.

Q. Yes.

A. And he would ask for the committee to be sent for and brought to the office, and that was the —what was decided upon then, then if management wouldn't talk in any way, that we would strike.

Q. When you say you would strike, was there any mention of a sit-down strike?

A. No mention.

Q. Did Mr. Leader say to you that he would call a sit-down strike?

A. No.

Q. What time were you supposed to go into work on May 6th?

A. Two-thirty.

Q. Two-thirty. Mr. Etter, where do you live?

A. At that—at the present time I live—

Q. No, no, not where you live at present, that is immaterial. Where did you live on May 6th, 1937?

A. 3729 North Fifth Street.

Q. 3729 North Fifth Street, and how far is that from the Apex Hosiery Mill?

A. Approximately two to three squares.

Q. Approximately two to three squares. On May 6th, 1937 you were near the Apex Hosiery Mill, is that right?

A. That is right.

Q. And about what time did you get to the Apex Hosiery Mill on May 6th?

A. Somewhere around 1:30.

Q. Somewhere around 1:30. Had you heard by that time that the mill was closed?

A. I did.

Q. When did you first—well, when you came there at 1:30—strike that first part—when you came there at 1:30 was there a crowd around the plant?

A. There was people around the plant.

Q. About how many, would you say?

A. Well, a couple of hundred people.

Q. Couple of hundred people. Was Mr. Leader there at that time?

A. No.

Q. When according to your recollection did Mr. Leader arrive there?

A. At the designated time of about two, 2:15.

Q. About two o'clock, and did he—did you see him at that time?

A. I did.

Q. And then what happened?

A. I went over and talked to him.

Q. And what did he say to you and what did you say to him?

MR. HIRSCH:
Objected to.

THE COURT:
I will receive it.

BY MR. SYME:

Q. Go ahead, Mr. Etter.

A. Well, I told him what had happened, that the plant had been shut down, that nobody was allowed in, the workers couldn't go to work, and the conversation went on and he asked me where was the committee, and I went and rounded up the committee and brought them back, and went to the office door, knocked on the door, and asked for Mr. Meyer or Mr. Struve, and some—

Q. Were you also with Mr. Leader when he went to the door of the Apex Hosiery Mill the first time?

A. I was right alongside of him.

Q. Right alongside of him, and what happened?

A. He knocked on the door and somebody pulled the shade over and ask him what he wanted. He said, "This is William Leader. I would like to see Mr. Struve or Mr. Meyer with the Apex committee".

Q. And the doorman answered the door, is that right?

A. That is right.

Q. And what did he say?

A. He went back to the—or, he went away and come back and said, "Mr. Meyer or Struve won't see you".

Q. And then what happened?

A. He knocked on the door again, and the same thing happened, and Inspector LaRue and the other policemen were standing there and asked what the matter was.

Q. Yes.

A. And spoke to Mr. Leader. Mr. Leader says, "Would you see if you can make an arrangement of some kind by going in and seeing Mr. Meyer?", so he come out and said he couldn't do nothing, and we left the steps.

Q. And then what did you do?

A. We picketed. The strike—

Q. No, don't say "we"; what did you do?

A. Well, I picketed around the mill.

Q. Picketed around the mill, and how many people—well, prior to that did Leader say anything?

A. He said there was a strike officially declared. He knocked on the door and told the door man, whoever it was, that the strike was officially declared.

Q. And did he say anything to the committee that was with him?

A. No, not at the time.

Q. Did he say anything to you at the time?

A. Not at that time, he didn't.

Q. All right, and you went downstairs, is that right?

A. We went off the steps.

Q. You went off the steps?

A. To the pavement.

Q. And you formed the picket line?

A. Yes.

Q. About how many people would you say were in that picket line?

A. There was only a few at first, but it grew in greater numbers as we went on.

Q. About how many?

A. Couple hundred people, at least.

Q. Couple hundred people, and where was Mr. Leader then?

A. I couldn't tell you.

Q. Mr. Leader wasn't with you?

A. No.

Q. He left you?

A. That is right.

Q. About what time did Mr. Leader come back?

A. Come back where?

Q. To the mill, if he came back.

A. I couldn't tell you what time he came back.

Q. All right. Were you at this conference on May 6th, 1937?

A. In Mr. Meyer's office?

Q. That is right.

A. Yes.

Q. How did you get there?

A. Somebody came out from the plant and said that Mr. Leader wants William Etter.

Q. And where were you at the time?

A. Across the street.

Q. You were across the street. Why did you leave the picket line to go across the street?

A. Well, there was stones being thrown from in and out of the mill, hitting the building and windows. I wasn't going to get hit on the head with them.

Q. When you say stones being thrown from in and out what do you mean?

A. There were stones thrown to the building and there were stones coming out of the building.

Q. So that the people on the inside were throwing stones, too?

A. That is right.

Q. Did you see people being hit on the outside?

A. That is right.

Q. So that you were across the street. Were you on the street across the street or were you in some —where were you?

A. Well, when I first left the picket line I went —I went directly across the street at the south end of the mill. I was standing in front of the restaurant where I always ate my lunch.

Q. Yes.

A. And from there I went up to the corner, and that is when somebody come out and wanted—told me that Leader wanted to see me.

Q. Do you remember about what time that was?

A. I couldn't recall what time it was.

Q. And so you went into the office, is that right?

A. That is right.

Q. And whom did you find in the office?

A. I saw Mr. Leader standing there and I went up to him and asked him what he wanted.

Q. Was Mr. Meyer there?

A. I didn't see Mr. Meyer.

Q. You didn't see Mr. Meyer?

A. At that time.

Q. And Mr. Leader told you what he wanted?

A. Yes.

Q. What did he say to you?

A. He says, "Where is your committee at", that Mr. Meyer wants us to come in his office and talk things over.

Q. And what did you do?

A. I went out and scouted up the committee and told people that I had seen, that I had known, if they saw so-and-so and so-and-so.

Q. And you got this committee—or, did you get all of the committee or did you just get a part of it?

A. I only received two of them.

Q. You could just find two members of the committee?

A. That is right.

Q. Who were they?

A. Russell Hammerl and Howard Hammerl.

Q. Russell Hammerl and Howard Hammerl?

A. That is right.

Q. All right, and you and the two Hammerls went into the mill, is that right?

A. That is correct.

Q. Did you go into the office?

A. Yes.

Q. And who was in the office at that time?

A. Well, there was Mr. Meyer, Mr. Leader, Mr. Burge, I think, I am not quite sure, I think he was there, and the two Hammerls and myself, that I recall.

Q. You had been working at the Apex Hosiery Mill for about five years by that time, is that right?

A. That is right.

Q. Did you know Mr. Meyer?

A. Only by face.

Q. Had you ever met him?

A. Never.

Q. And what happened?

A. Well, we were in there, and Mr. Meyer was quite excited and upset, and I imagine his mind was running away with him, he really didn't know what he was saying at some time or other, maybe—

Q. Were you introduced to Mr. Meyer then?

A. No, I wasn't.

Q. Did you talk to him, shake hands with him?

A. Not just then, I didn't.

Q. All right, go ahead.

A. And there was some conversation going on. I didn't receive all the conversation, I was in a fog myself half the time, but I recall where some story of cots come up, and I remember Mr. Meyer saying, "They might as well be comfortable as sleep on tables and floors and what not."

Q. All right.

A. And then is when you come in, Mr. Syme, and Mr. Leader said to Mr. Meyer if he would mind —if he wouldn't mind repeating what he said to the effect of an agreement, of negotiations in the morning at eleven o'clock in front of an attorney, and he did so.

Q. And then what happened?

A. Well, then I says to Mr. Meyer, "Well, this is the first opportunity that I ever had to come into the office and meet you", and I shook hands with him.

Q. Were you with Mr. Leader in the wareroom?

A. I was.

Q. Did you hear Mr. Leader addressing the employees in the wareroom?

A. I did.

Q. Do you remember what he said to them?

A. He said that—I don't remember exactly the words, but it was on the story that they should be peaceful and straighten up and clean up, that there was cots and food being sent in to them or going to be sent in to them, or something on that order, and that they should be peaceful and—well, be under certain disciplines, under their own.

Q. And then Mr. Leader left?

A. That is right.

Q. And you stayed in the plant?

A. That is right.

Q. You were the chairman of the sit-downers, is that right?

A. That is right.

Q. Did Mr. Leader ask you or any of the other employees in the plant to stay in the plant?

A. Nobody had asked me to.

Q. Did Mr. Leader ask any of the employees when he addressed them on the table? Did he say to them, "You stay in the plant"?

A. No.

Q. Do you remember the rain?

A. I do.

Q. Do you remember what happened to the crowd after the rain?

A. There was none.

Q. There wasn't? Now, you have heard witnesses testify to the fact that the locks were changed on the doors?

A. I heard that.

Q. Did the sit-downers change those locks?

A. Yes.

Q. Why?

A. Well, it happened on May 7th, there was a lot of commotion amongst the fellows and I went over to see what was the matter, and the only thing I could gather, that there was quite a few—a group of thugs being hired from the Middle West to come in and beat us up and throw us out, by management.

MR. HIRSCH:

That is objected to,—

A. (Continued) So we weren't taking any chances—

MR. HIRSCH:

—and I ask that that be stricken out. That is a statement which is purely this man's vision on the subject and unless he can support it by some direct and concrete and substantial evidence I ask that it be stricken out.

MR. SYME:

All right, you will be able to make the motion to strike out in the event it is not substantiated.

MR. HIRSCH:

I ask that it be stricken out.

THE COURT:

I ask counsel whether there is anything going to be produced to support that statement.

MR. SYME:

I don't know, Your Honor.

THE COURT:

Well, I will strike it out.

MR. HIRSCH:

Of course.

BY MR. SYME:

Q. Mr. Etter, did you have any trouble with the locks after that?

A. Very much.

Q. What happened?

A. We found in the gate in the yard, approximately five and a half, six feet tall, there is a fence and a gate, and many occasions we found it broken.

Q. Found the gate broken or the lock broken?

A. Lock broken and the gate opened.

Q. And the gate opened?

A. That is right.

Q. And what did you do?

A. Well, we kept putting on a new lock.

Q. Kept putting on a new lock. Mr. Etter, immediately after Mr. Leader left and the crowd dispersed on May 6th what did you do?

A. I got the committee together and decided that—well, the place must be cleaned and it must be kept clean, that there must be laws, because everything that is done is done by some laws or other, so we went together and we tried to form up a system, a routine that things should be followed by.

Q. Did you organize yourself into committees?

A. That is right.

Q. Did you sweep up the place?

A. We did.

Q. Now, these committees, did these committees continue until you left the plant?

A. They continued from the first to the last, there was always new committees added at all times, every little thing we run across.

Q. Name some of the committees that you had in the plant.

A. Well, there was kitchen patrol, there was a blanket committee, there was a sweepers' committee, there was a lavatory committee, night patrol.

Q. What was the purpose of the night patrol?

A. Well, that was acquired later on. That was—

Q. You mean after the June 10th incident?

A. That is right.

Q. What was the purpose of the sweepers' committee?

A. To keep the floors clean and the place healthy.

Q. What was the purpose of the lavatory committee?

A. To keep the place healthy, keep it clean.

Q. What other committees did you have?

A. There was an m. p. committee.

Q. A what?

A. Military patrol. There was a door committee.

Q. That is enough.

A. That is all I recall at the time.

Q. Were the janitors admitted into the plant?

A. At all times.

Q. At all times. You have heard testimony to the fact that the sit-downers followed the janitors around with clubs and with other—

MR. HIRSCH:

They were watchmen.

BY MR. SYME:

Q. Or watchmen—missiles. Was that true prior to June 10th?

A. It was never true that they followed them with clubs, and so forth, and what not, but they were followed after June 10th.

Q. They were not followed at all until June 10th, were they?

A. No.

Q. Where were the sit-downers?

A. Well, they—

Q. On what floors of the plant?

A. They were confined to the first and second floor. Second floor was their leisure place, more or less, there was a section, what we call the wing in the mill, that there was no—nothing at all, just an empty place, well, that is where they played darts, played pinochle, anything they felt like doing on that line.

Q. There were no machines there, were there?

A. No machines.

Q. No other equipment there?

A. Not at that particular point, no.

Q. All right. Did they go to the third, fourth, fifth or sixth floor?

A. They did not.

Q. Now, you have heard testimony to the fact that on June 10th certain machines were broken. Is that right?

A. That is right.

Q. What do you know about that?

A. Well, all I recall, I was somewhere within the mill on the morning of June 10th.

Q. Yes.

A. I think it was that time, I am not sure of

the date, only through the court records and what was brought in here.

Q. Yes.

A. And somebody said that there was machines on the fourth floor broke.

Q. Yes.

A. Well, I went up to look at them.

Q. Yes.

A. And I saw them broke.

Q. Yes.

A. The first thing was done, everybody was called to the second floor at their leisure quarters where meeting was held and there was plenty of room.

Q. You presided at that meeting? You were the chairman of that meeting?

A. That is right.

Q. And what happened?

A. Well, I told them what had happened, and that something was going to be done about it. We wanted to know who did it.

Q. Yes.

A. And there was word sent to the door committee that they don't leave until we—until word come that they could leave.

Q. Yes.

A. So the door committee locked the door and came up themselves, and we were discussing what—who might have done it or how it might have happened. Well, that was only a routine amongst the fellows, so we decided upon taking everybody's fingerprints in our own way.

Q. Yes.

A. And their names, that was in at the plant

from the night—the day before until the time we had discovered it.

Q. Yes.

A. And every sit-downer's fingerprints was taken.

Q. Yes.

A. And all the maintenance fingerprints were taken.

Q. Did you call anybody from the Police Department at the time?

A. I didn't, no.

Q. Did anybody from the Police Department come?

A. Sergeant O'Doyle.

Q. Captain Doyle?

A. Well, Captain Doyle.

Q. Did he come with anybody else?

A. Another detective and a secretary.

Q. And did Captain Doyle and the other members of the Police Department come at your request?

A. Not at my request.

Q. Did you ask somebody to call them?

A. I went out to notify somebody on the outside to get in touch with one of the officials of the union to get somebody.

Q. To get somebody from the Police Department?

A. That is right.

Q. And did you ask the police—what did you ask the Police Department to do?

A. Well, I was talking to Captain Doyle for about an hour and a half and I showed him an instrument we had picked up on the fourth floor we thought might have done the damage.

Q. Yes.

A. And we said we would like to have things fingerprinted, and he called a fingerprint expert.

Q. Yes.

A. Well, the fingerprint expert come in and put powder on everything imaginable.

Q. Yes.

A. He said that he couldn't take fingerprints on account of the oil pressure or anything on that line. He fingerprinted everything that was any way of getting prints, and he couldn't do nothing with it.

Q. Did you tell him that you wanted them to arrest the people who were guilty of this?

A. That is right.

Q. Now, you have heard Mr. Harper testify to the fact that after you fingerprinted him he said—or, rather, you said, Mr. Harper testified to the fact that you said, "Jesus Christ, I forgot to wipe that off!" Is that true?

A. It's a lie!

Q. Now, then, you have heard testimony with respect to the destruction of machines on June 23rd, is that right?

A. Testimony, yes.

Q. Yes, you have heard Mr. Harper testify to the fact that you herded him and others into the back yard?

A. That isn't true, either.

Q. Is that true?

A. It is not.

Q. Did you herd Mr. Harper into the back yard?

A. No.

Q. After June 10th did you follow the watchmen?

A. Yes, we did.

Q. Why?

A. We had suspicions that they were—they might have been the ones that caused the damage.

Q. What kind of machines were they that were damaged?

A. Well, they were mostly older machines on the fourth floor.

Q. They were older machines on the fourth floor?

A. That is right.

Q. What did you do after—did you find out about the destruction of the machines on June 23rd?

A. Approximately, somewhere around early morning, three or four o'clock, I was awakened from sleep and was told that there was machines damaged upstairs on the third floor.

Q. So that that wasn't done—or, strike that. You heard, you heard Mr. Harper testify to the fact that about nine o'clock in the morning he was taken out into the back yard and then there was a lot of noise from nine to six?

A. That is right, that is what he said.

Q. Now, then, is that so?

A. It is not.

Q. Well, then, now, you tell us what happened with respect to the destruction of this machinery, you said about three or four o'clock in the morning before.

A. Well, I was awakened from sleep and was told there was machines damaged on the third floor, so I went to the third floor and I saw them, and went on above floors and I saw there was machines damaged here and there.

Q. Yes.

A. There was nothing I could do, they were done,

I couldn't start magic and they were all right again, so I came downstairs.

Q. Did you have anything to do with the destruction of that machinery?

A. Nothing at all.

Q. As far as you know, did any of the sit-downers have anything to do with the destruction—

MR. HIRSCH:

Objected to.

BY MR. SYME:

Q. —of that machinery?

MR. HIRSCH:

Objected to unless he can testify that he watched the movements of two hundred sit-downers all night and all day.

MR. SYME:

Objected to unless you can watch the movements of two million Philadelphians all day and all night!

THE COURT:

Well, gentlemen,—

MR. SYME:

With respect to these people, he is the head of the sit-downers, Your Honor.

THE COURT:

Gentlemen,—

MR. SYME:

He is one of the defendants here.

THE COURT:

Well, now, gentlemen, I didn't call for any argument here.

MR. SYME:

Oh, I am sorry.

THE COURT:

Don't take occasion to make a speech, either of you.

MR. HIRSCH:

I object.

THE COURT:

I am entirely ready to rule. The question is proper and the objection is overruled.

MR. HIRSCH:

What was the question and answer?

BY THE COURT:

Q. So far as you know did any of the sit-downers commit this damage? is the question.

A. No, I do not.

THE COURT:

Now, Mr. Hirsch can examine as to your opportunities to know what they were doing.

BY MR. SYME:

Q. Did you participate in any way in the destruction of this machinery?

A. I did not.

Q. Did you order or ask anybody to destroy any of this machinery?

A. No, I did not. I was protecting it, not trying to destruct it.

Q. You were protecting it, not trying to destroy it. You left the plant when the others left, is that right?

A. I was the last one to leave.

Q. You from time to time went through the building, isn't that right, Mr. Etter?

A. Almost every day.

Q. Almost every day. You have heard Mr. Harper's testimony with respect to the destruction of certain property. Let me recapitulate. On May 6th you are supposed to have broken into the basement.

A. Couldn't break into the basement. There was no door to break into.

Q. You couldn't break into the basement because there was no door to break into?

A. That is right.

Q. The switchboard is supposed to have been torn out by you, by you and the other sit-downers.

A. When I come into the office to meet Mr. Leader the switchboard was on the floor.

Q. So that the sit-downers had nothing to do with that?

A. That is right.

Q. How about those benches in the yard that were destroyed?

A. Benches in the yard? I don't know of any.

Q. You don't know that there are any benches in the yard, is that it?

A. That is right.

Q. On May 27th you are supposed to have broken the door to the roof. Do you know anything about that?

A. I do not.

Q. Do you know whether any of the sit-downers broke any door to any roof?

A. To my knowledge they did not.

Q. Do you know whether there was a door to the roof broken?

A. I don't know.

Q. Did Mr. Harper ever complain to you about the destruction of any property?

A. Well, he said there was a window broke in the yard from playing ball.

Q. There was a window broken in the yard from playing ball?

A. That is right.

Q. Do you admit the breaking of that window from playing ball?

A. That is right, I do. It was an accident.

Q. Do you know anything about a half hose cabinet broken and then re-locked by you?

A. No, I don't.

Q. Or re-locked by Mr. Harper?

A. No, I don't.

Q. You don't know anything about that. Was that ever brought to your attention by either Mr. Harper or anybody else on behalf of the company?

A. Not that I recall.

Q. Mr. Harper testified that on May 29th the counters were broken on the examining tables on the second floor.

A. I don't know anything about it.

Q. You don't know anything about that?

A. I do not.

Q. Did you ever see those counters?

A. Don't even know what he is referring to.

Q. You don't know what he is referring to. On June 7th stockings were pushed off the machines, according to Mr. Harper—or, pressed off the machines, I am sorry.

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1536
microcard

A. I don't know anything about stockings being cracked off at any time.

Q. On May 26th the gate to the inner yard was broken. Did you have anything to do with the breaking of that?

A. Not that I know of.

Q. Well, did you have anything to do—

A. Myself?

Q. Wait, did you break a gate to the inner yard?

A. Not that I know of.

Q. As far as you know, did any of the sit-downers do it?

A. No, I don't.

Q. On June 8th Mr. Meyer's desk was opened, according to Mr. Harper, and the cigars were taken out. Do you smoke cigars?

A. No, I don't.

Q. Did you take any cigars out of Mr. Meyer's desk?

A. No, I did not.

Q. As far as you know did any of the sit-d wners take any cigars out of Mr. Meyer's desk?

A. Not that I know of.

Q. As far as you know did they break the desk open?

A. No.

Q. Did you break it open?

A. No, the desk wasn't broke open as far as my knowledge.

THE COURT:

I think we will recess for lunch until two o'clock.

(Recess, 12:30 until 2 o'clock P. M.)

After Recess

Present: Counsel as before noted.

Defendants' Evidence (Continued)

WILLIAM F. ETTER, recalled.

THE COURT:
Very well, gentlemen.

Direct Examination (Continued)

BY MR. SYME:

Q. After you left the plant were you present at any conferences that were held for the purpose of settling the strike?

A. I was.

Q. Now, after the settlement of the strike did you try to enroll members in Branch 1?

A. You mean—

Q. Did you try to get people to join the union, Apex workers?

A. Yes, we did.

Q. Did you experience any difficulty?

A. At some times.

Q. What difficulty did you experience?

MR. HIRSCH:
Objected to. This is subsequent to the settlement.

THE COURT:
Well, it may have some relevancy.

MR. HIRSCH:
All right.

THE COURT:
I can't tell that.

MR. HIRSCH:
All right.

THE COURT:
I will hear it.

MR. HIRSCH:
All right.

A. Well, the people were scared to join up. They were afraid they would be fired, and so forth.

BY MR. SYME:

Q. Now, I ask you again, Mr. Etter, did you or did—did you at any time destroy any machines in the Apex Hosiery plant?

A. No, I did not. I was looking forward to getting one of those machines.

Q. When you say you were looking forward to getting one of those machines what do you mean?

A. Well, I expected to become a knitter and run one.

MR. SYME:
That is all; cross examine. Oh, just one more question.

BY MR. SYME:

Q. You are working at the Apex Hosiery plant today?

A. That is right.
Q. And you are a member of the union?
A. That is right.

MR. SYME:
That is all.

Cross Examination

BY MR. HIRSCH:

Q. The sit-down strikers evacuated the premises on June 23, 1937, which was a Wednesday, did they not?

A. That is correct.

Q. And it was prior to that day that you were told, or awakened early in the morning and told about this new damage to machinery on the upper floors, and you found that damage?

A. I did.

Q. Did you send for fingerprint experts when you found the new damage on or about June 22nd, 1937?

A. It was in the morning of the day of the eviction that it was found. We sent for nobody at that time.

Q. As far as you know, the damage occurred during the preceding night?

A. That is correct.

Q. And that was after this Court pursuant to an opinion of the Circuit Court of Appeals, had entered an order commanding the sit-downers to evacuate the premises?

A. I think that is correct.

Q. Who was present at the mill when the sit-downers went out, insofar as the union officials were concerned? You said that Leader was present

when they went in, and Burge was present when they went in. Now, who was there when they went out?

A. Well, as I recall, the Mayor came in.

Q. Yes.

A. And with him was Mr. Syme, Mr. Leader, Mr. Rieve.

Q. Mr. Burge?

A. I think so. I am not quite sure, but I think he was.

Q. Mr. Brown?

A. Mr. Burge was with him; I don't recall Mr. Brown.

Q. Mr. Oehmig?

A. No.

Q. But you do recall that the president of your local was there,—

A. That is right.

Q. —Mr. Leader, that the vice-president of your local was there, Mr. Burge,—

A. That is right.

Q. —and that those same two officers were there when the sit-down strike began?

A. That is correct.

MR. SYME:

I think it should be made a matter of record, Your Honor, that Mr. Leader and Mr. Burge were both ordered by the Court to get the sit-downers out and that they would have been guilty of contempt of court if they had failed at least to make an effort to get the sit-downers out. I think that is important.

MR. HIRSCH:

Well, now, if we are going to go into that

phase of it, the Court entered an order against all of the defendants,—

MR. SYME:

That is true.

MR. HIRSCH:

—one of whom was Mr. Burge and one of whom was Mr. Leader.

MR. SYME:

That is right.

MR. HIRSCH:

But the Court did not tell those two to go up and get their union out. The Court told all the defendants to get out, including those two.

THE COURT:

Well, I don't think there is any occasion to do anything about it now.

BY MR. HIRSCH:

Q. How many sit-downers were on the premises from time to time, as far as you know?

A. Somewhere around two hundred and fifty.

Q. It was as a result of additional men being on the premises that after two hundred cots were brought in on May 6th an additional fifty cots were supplied by the union, isn't that a fact?

A. I don't recall that.

Q. Well, do you recall additional cots coming up?

A. No, I don't.

Q. Now, as to the machinery damage, you said that machinery damage did occur on June 10th or about that date?

A. That is right.

Q. And that was two footers on the third floor and twenty-eight leggers on the fourth, as far as you recollect?

A. Well, I didn't count the machines.

Q. But you—

A. I didn't see any on the third floor. It was on the fourth floor that I saw it.

Q. But you saw damage on the fourth floor?

A. That is right.

Q. And it was after that that you had the watchmen followed by sit-downers to see that they didn't do any damage to anything around the plant, is that correct?

A. That is right.

Q. And were they followed day and night in their rounds?

A. Every hour.

Q. Every hour?

A. That is right.

Q. And did that practice continue until the sit-downers evacuated the property?

A. It did.

Q. So they could not have destroyed one hundred and four machines on June 22nd, could they, because they were watched by the sit-downers,—

A. That is right.

Q. —is that correct? That eliminates them, doesn't it?

A. To an extent, yes.

Q. Now, you said that when you went to the plant on May 6th you had no idea there was going to be a sit-down strike?

A. I did not.

Q. And two hours later you were chairman of the sit-down committee?

A. Well, I was chairman—I was elected chairman of the strike the night before, chairman of the committee of the Apex Shop Association.

Q. Now, isn't it a fact that when you went in to Mr. Meyer's office with Mr. Leader and your small committee, and met Mr. Meyer, as you have testified, you told him three or four times, "From now on I am in command of this shop"?

A. No, I did not.

Q. You did not?

A. No.

Q. And isn't it a fact that when you went on to the property you knew there was going to be a sit-down strike and that you were to be chairman of the committee?

A. I did not.

Q. The doors were locked and there was a door committee appointed by the sit-downers to guard the gates or the doors to the plant, was there not?

A. After we went in.

Q. After you went in?

A. That is right.

Q. No one could go in and out those doors unless the door committee of the sit-downers approved it?

A. That is right.

Q. Or you approved it, is that correct?

A. That is correct.

Q. And when it came time to leave someone in whom the door committee didn't know, they went to you for final approval?

A. I think so.

Q. And as a matter of fact, the doors were also locked to prevent any of the sit-downers from getting out, and that was on orders of the union, so

that the plant could be held against the management?

A. No, it is not true.

Q. Why?

A. Because none of the sit-downers that had got out—

BY THE COURT:

Q. Well, Mr. Etter, let me ask you one question which is not clear in my mind. There was a sit-down strike in the plant?

A. That is correct.

Q. Now, when did it originate and who originated it? Somebody—somebody, somewhere along the line, started the idea of the sit-down strike. Now, what is your—what do you want us to understand as to how it originated? Who started it,—

A. Well,—

Q. —and when did it start,—

A. The only—

Q. —and what was said?

A. The only way that I can figure it out is that when I went into the office and things were straightened out in the office, that the fellows were in there and a sit-down strike was the most logical strike at that time, and there was nobody authorized a sit-down strike. The Exide had one, and so forth; I guess that was the most logical thing at the time and they just carried on with that, the fellows themselves.

BY MR. HIRSCH:

Q. As a matter of fact, the union of which you had become a member had signed agreements in a number of shops in Philadelphia preceding this at which sit-down strikes were first held before the

management would give in and sign a closed shop agreement, and you knew that, isn't that correct?

A. I wasn't in the—I was no official in the union,—

Q. No,—

A. —to sign agreements.

Q. —I appreciate that, but you knew all there was going on?

A. Maybe through papers.

Q. Yes, but you knew it?

A. To an extent, yes.

Q. Yes, and all the other fellows who attended that meeting that night at Fifth and Butler knew it, and it was discussed that night?

A. What was discussed?

Q. The question of a sit-down strike.

A. No, it wasn't.

Q. It wasn't discussed that night?

A. It wasn't.

Q. You signed pledge cards that night, didn't you?

A. Some may have.

Q. You were already in the union, you didn't have to sign, is that it?

A. Well, I was a member of the union.

Q. Yes.

A. I didn't—there was new members, when they come in they must—

Q. Did the new—

A. To join a union they all sign a card.

Q. Did the new members in that group sign pledge cards that night?

A. Well, I wouldn't say exactly. I imagine they did.

Q. Did you see them?

A. No.

Q. Didn't you say before that they all signed up that night?

A. I didn't say that they all signed up that night.

Q. Didn't you testify they all signed application blanks, and you were referring to this group that met at the Cafe at Fifth and Butler on the second floor?

A. I remember even after the strike signing application blanks.

Q. I didn't ask you that. Didn't you say that all of the group that met at Fifth and Butler signed application blanks?

A. I don't recall whether I mentioned—

MR. HIRSCH:

Mr. Rodebaugh, will you give me the first few questions, please, on that? It was right in the beginning of his testimony. Read it, please.

(The following testimony was repeated by the Reporter:

"Q. And there were Apex workers there, is that right?

"A. That is right.

"Q. As far as you knew did all of them sign application blanks?

"A. Every one.")

BY MR. HIRSCH:

Q. So that you testified, in referring to your testimony about this meeting at Fifth and Butler, that all signed application blanks. Now, do you want to change that, or is that correct?

A. At some time or other they all signed application blanks, that is correct.

Q. But what I am asking you is, isn't it a fact that that night, when the meeting took place at Fifth and Butler, all of them present signed application—pledge cards?

A. I wouldn't say positively that I seen every one sign a pledge card.

Q. Did you see some sign pledge cards?

A. There were some signed pledge cards, that is correct.

Q. Now, it is a fact, is it not, that you signed passes permitting people to leave—permitting sit-downers to leave the premises for one reason or another, from time to time during the strike?

A. That is correct.

Q. I show you some of them which have been offered in evidence as part of a larger exhibit marked Plaintiff's Exhibit 16.

(Papers were shown to the witness.)

BY MR. HIRSCH:

Q. They are stamped with your name, are they not?

A. That is right.

MR. SIMONS:

If Your Honor please, may we just note on the record that that is part of an exhibit that was offered generally in evidence without any proof or admission as to the fact or relevancy at that particular time.

MR. HIRSCH:

It was offered at that time, sir, as a group of papers found on the premises.

THE COURT:

It is obviously relevant. It is all right.

MR. SIMONS:

No, no, I am not referring to this particular thing, I am referring to the entire folder that was offered. It was offered at that time without it being admitted that the folder and particularly its contents were relevant, and it would be a matter of proving each particular item in the folder.

THE COURT:

Well, I—

MR. SIMONS:

I am raising it at this time so that the record will indicate that that is not part of the evidence or part of the relevant evidence.

THE COURT:

I don't get your point at all, Mr. Simons. Whatever it is, the present line of examination is proper.

MR. SIMONS:

No, I am not objecting to the present line of examination except for the record to show that at one time, some time previously, a folder had been offered in evidence without any discussion as to the relevancy of any of the material in the folder, so that it does not appear that everything in that folder was relevant to the issue, unless so proven, as he is doing at the present time.

THE COURT:

Well,—

MR. HIRSCH:

Well, I offered it generally as papers found on the premises immediately upon the management going in and taking repossession of the place.

THE COURT:

Well, it is all right. Go ahead. It can be noted as Mr. Simons wants.

BY MR. HIRSCH:

Q. Now, this card is dated June 5th, and says "Leave granted to Paul Lang to attend funeral left 2:30 p. m. June 5." Signed, Wm. Etter.

That was a card that permitted Paul Lang, a sit-downer, to leave the premises to attend a funeral, is that correct?

A. That is correct.

Q. And he had to come back to the premises when he was through, didn't he?

A. No.

Q. Did he ever come back?

A. He came back.

Q. Yes, but he couldn't get out unless you as the chairman of the sit-down committee permitted him to go out, by these papers?

A. No, there was—there had to be a routine.

Q. I am not questioning that. I am asking you about the routine. He couldn't have gotten out, in other words, the door committee wouldn't have permitted him to leave the premises unless he had a pass from you?

A. Well, that is correct.

Q. Here is another pass which says John Stack, Friday June 4, leave to be back Sunday evening

June 6. Signed, Wm. Etter; and that is a similar type pass?

A. That is on the same order. That—that was more not to get out, but to come back in, to be identified.

Q. You mean that anybody could leave the premises any time they wanted?

A. Everybody had their leave, and if they didn't want to come back they could stay away.

Q. Yes, but they had their leave at prescribed times to go home to their family from time to time for short intervals, isn't that correct?

A. Well, I wouldn't say it was short intervals. I would say it was fairly long intervals.

Q. But they had to get a card, as you said, before they could get out of the premises?

A. No, they didn't.

MR. HIRSCH:

Oh, read his testimony—

THE WITNESS:

In that special case, yes, but not—

BY MR. HIRSCH:

Q. Well, what was there special? Didn't this man have a good reason—

A. That is right.

Q. —to get out, to attend a funeral? Why did he need your permission, then, to get out of the plant to go to a funeral?

A. What time—that time was 2:30 in the afternoon?

Q. Left, it says he left 2:30 P. M., June 5.

A. Well, that wasn't the time that they all went

home. That was a time in between the regular routine of going home and coming back.

Q. So that there was a time somewhere in between the regular routine that they couldn't get out without your permission, is that right?

A. If they wanted to get out they could have went out on their own.

Q. Then why did he have to come to you and get a pass?

A. For identification, to get back.

Q. I see. He couldn't be identified by the door committee, could he, being one of a group that was in there for seven weeks?

A. The door committee wasn't the same man at all times.

Q. But it was the same group, practically speaking, for seven solid weeks, wasn't it? Didn't you know each other? Weren't you all fellow-employees?

A. That is right. We didn't know half, half of us didn't know the other half.

Q. Didn't you?

A. No.

Q. But you would have after living together for seven weeks and doing nothing but playing pinochle?

A. Well, we got to know each other, that is right.

Q. And you got to know each other to the extent that unless he had a card he couldn't get back in, is that what you want us to understand? Or isn't the reason as I say, he couldn't get out without a pass because sit-downers were not permitted to go out unless you as the chairman of the sit-down committee permitted it, and you were working

under orders from Mr. Leader, the president of the union?

A. I was working under orders from nobody.

Q. Was this sit-down your idea?

A. It wasn't my idea.

Q. Whose idea was it?

A. I don't know.

Q. But you were chairman?

A. That is right.

Q. Now, you said you got to the plant some time around 1:30 ready to go to work, is that correct?

A. That is correct.

Q. As a matter of fact, you got to the plant at 1:30 because the night before you had planned to be there with the group that had met at Fifth and Butler, together with about ten thousand other members of this rump committee, called from every hosiery mill in Philadelphia, and told to be there at 2:30, isn't that why you were there?

A. No.

Q. Was it a coincidence that people came out from every direction, as described by Mr. Higgins, at one time, and that it happened to be the time, 2:30, when seven mill owners have testified their employees asked them to leave and be down at the Apex for a demonstration?

A. I don't know why the people came.

Q. You don't?

A. I don't.

Q. And the committee that called upon Mr. Meyer that day was composed of Mr. Leader, the president of the union, you, as the chairman of the employees in the Apex plant, and ten to fifteen thousand other persons outside as "persuaders", isn't that a fact?

A. Repeat that question, please.

MR. HIRSCH:

Repeat it, Mr. Rodebaugh.

(The question was repeated by the Reporter, as follows:

"Q. And the committee that called upon Mr. Meyer that day was composed of Mr. Leader, the president of the union, you, as the chairman of the employees in the Apex plant, and ten to fifteen thousand other persons outside as 'persuaders', isn't that a fact?")

A. No, the committee that was supposed to meet Mr. Meyer was a committee to be in work and called down, Mr. Leader was going to the office and send up for us,—

Q. But at the same time—

A. —or call up for us.

Q. But at the same time your committee went up the steps to meet Mr. Meyer, by coincidence or otherwise there were ten to fifteen thousand other people outside who by their presence alone let Mr. Meyer know that the union's request for him to sign a closed shop agreement had better be met, isn't that a fact?

MR. SYME:

Your Honor, I haven't objected to a lot of these speeches—

MR. HIRSCH:

They aren't speeches, they are questions.

MR. SYME:

—and melodramatics, but this idea of ten to

fifteen thousand people, and "had better be met"—I mean, I don't see—they are long questions, they are cumbersome questions, and the witness has answered him two or three times in succession.

THE COURT:

Well, do you want to object?

MR. SYME:

Yes, I object.

THE COURT:

I will overrule the objection.

A. Well, I don't know anything about the people on the outside.

BY MR. HIRSCH:

Q. You saw them there, though, didn't you?

A. I saw people, that is right.

Q. And they were there at the same time that you and Mr. Leader and the rest of your committee went up the steps?

A. That is right. Some of them people were neighbors, that I knew.

Q. When did you first—well, there is no doubt that there were a few neighbors around, after the crowd gathered—when did you first see Mr. Leader that day, and where?

A. Somewhere around two o'clock he drove up Fifth Street and parked on Luzerne Street, and I walked over and talked to him.

Q. And then where did you and he go?

A. He asked me where the committee was. I told him what had happened. He asked me where the committee was.

Q. Yes.

A. And I told him, "I don't know, but I will scout them up".

Q. Where did he go, and how long were you away from him?

A. He waited at the car.

Q. How long?

A. Oh, ten, fifteen, twenty minutes.

Q. How far was his car from the Fifth and Luzerne Street entrance?

A. Approximately halfway around on Luzerne Street from Fifth to the end of the mill.

Q. All right, so when you saw him he was at his car, and he waited there while you rounded up the committee, and you went back and found him at the car. Then where did you go with him?

A. We went up on the stairs, or the steps, to the office door.

Q. And you were with him from the time he left his car and went up to the steps?

A. Yes.

Q. Then what happened?

A. Then he knocked on the door and asked to see Mr. Meyer and Mr. Struve.

Q. Yes.

A. And then they wouldn't see him, and he asked again, and he was talking to Inspector LaRue, and he went in and came out.

Q. You were there with him all this time?

A. All that time.

Q. That was on the steps?

A. On the steps.

Q. Go ahead, then what happened?

A. Then he knocked on the door again. Whoever the doorman was, he told him, being as Mr.

Meyer wouldn't meet with him, that a strike was officially declared.

Q. And then where did you and he go?

A. Well, Mr. Leader said our right is to picket if we want to, he didn't say we had to picket, or we are not allowed to picket, if we want to picket it is our privilege. We started to picket. I don't know where Mr. Leader went to.

Q. What time would you place that? What time was that, how long before the stones started to fly, would you say?

A. Ten minutes, fifteen minutes.

Q. Now, when he said you had the right to picket, that was ten to fifteen minutes before the stones started to fly, is that correct?

A. We had picketed for ten or fifteen minutes.

Q. Yes. Now, had the police by this time arrived and begun the dispersement of that crowd through mounted or motor cycle police, or otherwise?

A. Well, there was plenty of police around.

Q. Was the crowd being dispersed at that time?

A. There was motor cycles driving through people. I didn't see any mounted police.

Q. There were no mounted police there that day, were there?

A. I don't know—

Q. You didn't see any?

A. —there might have been. I didn't see any.

Q. You didn't see any. You were outside?

A. That is right.

Q. Now, when the missiles began to fly it was ten minutes after Mr. Leader—ten to fifteen minutes after Mr. Leader was refused admission at the gate. Where was Mr. Leader then, do you know?

A. I couldn't tell you.

Q. Do you know where he went?

A. No, I don't.

Q. From the time that Mr. Leader was refused admission at the gate unfil the missiles began to fly, the motor cycle police, during that ten to fifteen minute interval, were driving through the crowd and trying to disperse them?

A. That is correct.

Q. There was a rather large crowd there of ten or more thousand people, were there not?

A. Well, I couldn't say as ten thousand people.

Q. There was a very thick crowd?

A. There was a large crowd.

Q. And with the police driving through during this ten or fifteen minute interval there was quite a bit of commotion, I suppose, and noise going on, wasn't there?

A. There was noise and talking.

Q. And were the people moving about as a result of being forced to move through the police?

A. They were.

Q. And the corner at Fifth and Luzerne was a rather heavily packed and exciting corner during that interval, wasn't it?

A. I wouldn't say any more than anywhere else.

Q. The whole thing was heavily—I mean, the whole street on Fifth and Luzerne Street, on both Fifth and Luzerne, was jammed with people, and there was a lot of excitement during the ten or fifteen minute interval, wasn't there, by reason of the police driving through, and so forth?

A. That is correct.

Q. And that was the interval from the time that

you left Mr. Leader on the steps until the missiles began to fly?

A. That is correct.

Q. And when the missiles began to fly, the place was raided, did subsequently the crowd move into the mill?

A. Well, I couldn't say. I left the sidewalk of the mill when the missiles flew.

Q. But from that moment on there was real tumult in the place, wasn't there,—

A. Well, I couldn't say.

Q. —real excitement?

A. I wasn't present up at the mill.

Q. Where did you go?

A. I was across the street.

Q. Oh, I am not saying you were in the crowd that went in, but from the minute that the missiles began to fly, then there was real excitement around there, wasn't there?

A. I wouldn't say from the minute.

Q. Well, even before that, there was real excitement as a result of the motor cycle police—

A. That is right.

Q. —driving through? Now, you are sure of everything you have said, is that correct?

A. Yes.

Q. When did Mr. Higgins, the preceding witness, find his fifteen to twenty minute interval to talk quietly with Mr. Leader on the corner,—

A. I don't—

Q. —as far as you know?

A. I haven't—didn't see Mr. Higgins.

Q. That is all. No, I have more questions; that is all on that.

When you finally got into the office of Mr. Meyer

you said you were accompanied by Mr. Leader and Mr. Burge, and Russell and Howard Hammerl?

A. That is correct.

Q. Was anyone else there at that time?

A. There was two more Apex workers. I don't recall who they were.

Q. But while you were in the office of Mr. Meyer this mob of persons was milling about throughout the mill, were they not?

A. To my knowledge, yes.

Q. And you were in the office of Mr. Meyer after the office had been turned upside down by the mob, isn't that correct?

A. Mr. Meyer's office wasn't touched.

Q. Mr. Meyer has a private office in the back?

A. That is correct.

Q. Everything else was turned upside down in front of it in the general office, wasn't it?

A. From what I could see, yes.

Q. And Mr. Meyer had been hit in the back of the head by something, had he not?

A. I couldn't say.

Q. Did he appear dazed or injured, as far as you could see?

A. Well, he seemed very highly excited.

Q. Do you think he had reason to be excited, as far as you—

A. Yes, I think so.

Q. All right.

A. He mght have had reason to be excited.

Q. It is true, is it not, that after the locks were changed on the various entrances to the plant the only keys to those locks were in your possession, or the door committee's?

A. No.

Q. Who else had keys?

A. There was two or three keys to each lock.

Q. Yes, and who had them? Did you have a set?

A. Different members of the committee had them.

Q. That is what I said. Maybe I didn't make myself clear. After the locks had been changed by the sit-downers and all new locks were put on, the keys to those new locks were in either your possession or in the possession of the members of the door committee of the sit-downers?

A. Well, that is right.

Q. Did you ever send a set of keys to Mr. Meyer, the president of that mill, in order that he could come into his own mill?

A. Mr. Meyer could get in any time he wanted to.

Q. Answer my question, please.

A. No.

Q. The answer was "No", wasn't it? I mean, you shook—I heard something. "No", you never sent a set of keys?

A. That is right.

Q. You never sent any other official of the company a set of keys, did you?

A. No.

Q. Now, you said before in your testimony, you referred to a question of laws, and you said there must be laws, everything is done by some law or other. Under what law were you acting when you acted as chairman of the sit-down committee, and the sit-downers remained in the possession of this mill for a period of seven weeks.

A. I didn't quite get your question.

MR. HIRSCH:

Read it, please, Mr. Rodebaugh.

(The question was repeated by the Reporter, as follows:

"Q. Now, you said before in your testimony, you referred to a question of laws, and you said there must be laws, everything is done by some law or other. Under what law were you acting when you acted as chairman of the sit-down committee, and the sit-downers remained in the possession of this mill for a period of seven weeks.")

A. Well, on that question I think it is—well, it is to—but it is the law, what I think you are referring to, and what I meant, was the Wagner Labor Act, you had the right to picket, you had the right for collective bargaining, you had the right if you wanted to belong to a union, you could belong to a union.

Q. Do you know which provision of the Wagner Labor Act—if there is any—permits you to break into your employer's mill and retain exclusive possession of it for seven weeks, against his will?

A. As far as I know, nobody had broke into a mill. There was no discussion about it or anything else.

Q. Now, will you answer my question?

A. No, I don't—

MR. SYME:

Well, I think that is a perfectly fair answer, Your Honor.

MR. HIRSCH:

I asked him about laws. I didn't ask him whether anybody broke into the mill.

MR. SYME:

I object to it, Your Honor. Mr. Hirsch asked him by what law he did that, and his answer is, "I don't think we did it".

THE COURT:

Well, what do you want? The question has been answered. I don't think there is any occasion for a ruling.

BY MR. HIRSCH:

Q. Now, you said before, and I just want to pick up on some of these details, that there was no door to the basement to be broken?

A. That is correct.

Q. There was a basement,—

A. That is right.

Q. —but no door?

A. There was a door, but it was a door that opened and shut, without a lock.

Q. But there was a door to the basement?

A. There was a door, that is correct.

Q. But before you said there was no door to the basement, didn't you?

A. That had to be broken open, yes.

Q. Oh. Now, was there a door in the basement to the electrician's cage that had to be broken open to get into?

A. There was a cage with a—same type gate on it as the cage itself was.

Q. And do you recall an incident in which the drawers inside the cage had been opened, and you

and Mr. Harper and the police went down to look into the incident, Mr. Harper being the maintenance man, to ascertain who may have done that. Do you recall that incident?

A. I don't recall the police, but I recall now that Mr. Harper and I went down to see about it.

Q. Don't you recall the police being there?

A. I don't recall the police. There may have been. I am not saying there wasn't.

Q. Does this refresh your memory, that when you went down with Mr. Harper to examine the drawers that had been broken into you took your handkerchief out of your pocket and went up to one of the drawers in a manner something like this (indicating) and opened the drawer with the handkerchief, and one of the police said, "You are a pretty smart fellow!" Do you remember that?

A. I don't recall.

Q. You don't recall it?

A. Not that incident, no.

Q. And don't you remember after the door to the roof had been broken open that Mr. Harper and you went up and examined it?

A. I don't recall that.

Q. Would you say you didn't?

A. I don't remember any door to the roof being broken.

Q. Now, do I understand your previous testimony on direct examination to be that there was never any complaint made to you about anything that was broken with the exception of a little window in the yard which was broken by a ball?

A. Not that I recall.

Q. In other words, do I understand that Mr.

Harper, who was the maintenance man there from day to day—was he not?

A. He was.

Q. —and it being admitted that considerable damage was done to machinery on June 10th and June 22nd or 23rd, that the only complaint that you received from him about damage was a window in the yard broken by a ball, he spoke to you about that?

A. That is, outside of the machinery that had been damaged on June 10th.

Q. Oh, you didn't say that before, did you?

A. Well, I took it for granted that was understood. When the damage to machinery was brought up Mr. Harper had his fingerprints taken and so did everyone else, so, naturally, we must have talked about it.

Q. But in your direct testimony you said, "The only complaint"—when Mr. Syme asked you—"The only complaint about any damage which I heard from Mr. Harper was about a window in the yard", and you broke that playing ball?

A. That is right.

Q. And now you admit a complaint about the damaged machinery at the time?

A. I am not saying he actually complained. We were talking about it at the time.

Q. Now, you say you don't know anything about counters. Do you know what a counter is? Isn't that a machine on the end of the table which permits you to count the number of pairs of hosiery so that when you get up to a dozen a bell rings, or something? Wait a minute, I want to make sure myself. Is that right?

It is an instrument that as you place a pair of hose a wheel turns like a turnstile in the subway, and then when you get to a dozen a bell rings so the girl, the person who is counting, doesn't have to say one, two, three, four, she can just keep putting them over, and then when the bell rings she knows she has a dozen?

A. Well, I don't know anything about that. I am a legger, not an examiner.

Q. Been there seven years?

A. That is correct; never allowed anywhere in the mill except on the fifth floor.

Q. That is where you work?

A. That is right.

Q. Now, you testified on direct examination by Mr. Syme that neither you nor any sit-downer, as far as you know, damaged this machinery?

A. That is right.

Q. That is correct, isn't it?

A. That is correct.

Q. On the morning of June 23rd, about 4:30 A. M., you were awakened and told machinery had been damaged?

A. Somewhere around that time.

Q. Where were you asleep at that moment?

A. On the second floor.

Q. And where did you find the machinery that was newly damaged during that night or the previous day?

A. Different places in the mill.

Q. What floors?

A. On the third, I think.

Q. The what?

A. The third floor, from the third floor up.

Q. What time did you go to bed that night?

A. Around eleven, twelve o'clock.

Q. And you were asleep until 4:30, when they awakened you and told you about it?

A. Somewhere from three to four o'clock, I don't exactly know what time I was awakened, but three, four o'clock.

Q. But you were asleep from the time you went to bed at eleven until the time at three or four when they awakened you and told you about the damage?

A. When I went to bed at eleven or twelve, yes, sir.

Q. How do you know what the other sit-downers were doing while you were asleep?

A. I said to my knowledge I don't know of any sit-downers that broke any machinery.

Q. Is that your answer?

A. That is correct.

Q. It is possible that every other sit-downer in the place could have done something while you were asleep, as far as you know, isn't it?

A. Well, there were men put on duty to watch things like that.

Q. I said as far as you knew.

A. Well, I guess it could have been done.

Q. And it is a fact, is it not, that when the Mayor of the City of Philadelphia went up to the plant of the Apex Hosiery Company on June 23, 1937, he led what amounted to a triumphal march of the sit-downers out of the mill, and congratulated them on the swell job they did.

A. I couldn't say.

Q. Didn't he make a speech?

A. He talked to the sit-downers.

Q. And didn't he congratulate them, and didn't

he tell them, even though they are on the outside now, they should fight on?

A. I don't recall him stating that.

Q. What did he say?

A. I remember him saying that the Court has ordered the sit-downers out of the mill and that they should go peaceful.

Q. And what else did he say?

A. And the strike was still on if they considered it on, and they would have to stay on the outside, the sit-down strike was ruled out.

Q. And isn't it a fact that he then got into his machine, and the machine slowly paraded around the entire building, led by the Mayor, with all the sit-downers and the rest of the members of the mill following in a parade?

A. I couldn't say. I was the last one to leave the mill. Everybody was out when I left.

MR. HIRSCH:
That is all.

Redirect Examination

BY MR. SYME:

Q. Just one minute, the night of May the 5th you testified that you were elected the chairman of the Apex Shop Association?

A. That is correct.

Q. Was there any question at the time before the Apex Shop Association of a sit-down strike?

A. Was there any question at that time of a sit-down?

Q. That is right.

A. There was none.

Q. Were you elected the chairman of a sit-down strike?

A. By the members, no; elected chairman of the shop, but not of a sit-down strike, by the members.

Q. Chairman of a Shop Association, and you continued chairman of that Shop Association after the strike was settled, isn't that right?

A. That is right.

Q. There was no sit-down strike then, was there?

A. No.

Q. You say you knew what was going on at the time and that there was a sit-down strike at Exide Battery. Do you know of any other sit-down strikes that were going on in the City aside from hosiery? Strike at the Heintz Automobile Body Manufacturing Company, isn't that right?

A. That is right.

Q. Was that a sit-down strike?

A. I recall now it was. It was mentioned.

Q. There were strikes all over the country, sit-down strikes. General Motors?

A. That is right.

Q. Was that a sit-down strike?

A. Yes.

Q. They are not members of the hosiery union, are they?

A. No.

Q. Mr. Leader didn't lead them, did he?

A. No.

Q. You got to the plant at 1:30,—

A. Approximately.

Q. —is that right?

A. 1:30.

Q. Was that pre-arranged, that you get there at 1:30?

A. No.

Q. How did you get there at 1:30?

A. Well, I saw people coming out of the mill somewhere earlier than that past my home, and I knew some of them, and I asked them what is the matter. They had overalls, and girls had everything they owned, and they told me that there is going to be a strike at the Apex, that we were ordered to get out until further notice, so I went up at 1:30. That is the time I generally went to work. I went up to see what was the matter. We had arranged to meet Mr. Leader at—through contact in the office, to upstairs, that we were coming down as the committee.

Q. You had arranged to meet Mr. Leader at what time?

A. Quarter of three he was to send for us.

Q. Quarter to three. You were to be at work at what time? What time did your shift begin?

A. 2:30.

Q. At 2:30, and he was to come to the office, is that right?

A. From the street, that is correct.

Q. From the street. After he was in the office, what was he to do?

A. Tell Mr. Meyer that the committee of the Apex and himself would like to have a meeting and talk things over, and that he should send for us, and he was going to give them the names.

Q. You have testified to the fact that you were never allowed anywhere else in the building except on the fifth floor. What do you mean by that?

A. Well, we were never allowed anywhere in

the mill. Well, even now we ask permission to go to any other floor.

Q. I don't understand that. Explain that to me.

A. Well, if we are seen on any other floor we are told to go back.

MR. HIRSCH:

I object to that.

MR. SYME:

You brought it up.

MR. HIRSCH:

I didn't bring it up.

MR. SYME:

You brought it up. You asked him about the fifth floor when he was—

MR. HIRSCH:

That is right,—

THE COURT:

I don't see what it has to do—

MR. HIRSCH:

Nothing at all to do with the case, unless Mr. Syme wants to show the plant is efficiently operated.

MR. SYME:

Your conception of efficiency and mine may be different.

THE COURT:

If you object to it as immaterial I will sustain the objection.

MR. HIRSCH:

I object.

BY MR. SYME:

Q. Isn't it a fact that there were a group of other people with the Mayor when he came to take the sit-downers out? Do you remember a group of police with him?

A. Yes, there was police.

Q. Do you remember a group of outside people that you didn't know at all?

A. Well, there was a group of people, not an exceptionally large group, but the ones I knew I had mentioned.

Q. But there were other people?

A. There was one man, I recall, was supposed to be Mayor Wilson's bodyguard or something, I don't know who he was, but that is what I was told or heard, or something, and he—I know he was there, for a fact.

Q. Do you know a Mr. Butler, who is vice-president of the Philco Radio Company?

A. No, I don't know him.

Q. You don't know him. Didn't you have a time—

MR. HIRSCH:

As long as you are identifying him, he is chairman of the Mayor's Labor Board.

MR. SYME:

Yes, but he is vice-president of Philco Radio.

MR. HIRSCH:

And he is also chairman of the Mayor's Labor Board.

MR. SYME:

Not at that time.

MR. HIRSCH:

Yes, he was.

MR. SYME:

Oh, no.

MR. HIRSCH:

Member of the committee of mediation.

MR. SYME:

He was a member of the committee.

THE COURT:

Will you please proceed with the examination, gentlemen?

BY MR. SYME:

Q. Mr. Etter, didn't the sit-downers have a particular time when they went to sleep?

A. Well, they were always—they all had to be in bed by twelve o'clock.

Q. They all had to be in bed by twelve o'clock. That was an established rule, is that right?

A. Yes, sir, that is right.

Q. And did you have a committee to look after that?

A. We had what we call a night patrol.

Q. You had a night patrol to see to it that all the sit-downers went to bed at twelve o'clock?

A. That is correct.

Q. So that by three or four o'clock practically everybody was asleep—

A. That is correct.

Q. —is that right?

MR. HIRSCH:

Of his own knowledge?

BY MR. SYME:

Q. Of your own knowledge?

A. Well, according to the rules and regulations, the way things worked. Some nights I didn't go to bed until maybe two o'clock, walked with the committee that was on duty to see that things were carried out.

Q. The patrol committee was under your direction?

A. Well, under the direction of the shop committee.

Q. And you were the chairman of the shop committee?

A. That is correct.

Q. Did you have a chairman of the patrol committee?

A. There was chairman of every committee.

Q. And did the chairman of the patrol committee report to you the events of that night?

A. I don't recall whether it was him or whether—

Q. Well, did he tell you whether the people were asleep or not?

A. Well, I went to sleep. He didn't bother—it was up to him, the responsibility was his and if it wasn't carried out he took the responsibility for—anybody that was awake and was reported awake, the next day it was his job to see that they were—they were to go to bed hereafter. That was his job. There was no—well, John Henry didn't go to sleep, and Joe comes up and squeals on him, there was none of that.

MR. SYME:

Yes, that is all.

Recross Examination

BY MR. HIRSCH:

Q. Just a second, did you ever see that card, or one like it, I mean?

(Postal card dated May 21, 1937 from William Leader, addressed to William Meyer, Jr., was shown to the witness.)

A. That is right, I have seen that card.

BY MR. HIRSCH:

Q. And do you recognize Mr. Leader's signature on that card?

A. Well, I think that is more or less of a stamp of some kind.

Q. I don't mean that he personally signed that card, but he signed the mimeograph that made that card, as far as you know? Do you recognize that signature—

MR. SYME:

Wait a minute,—

BY MR. HIRSCH:

Q. Do you recognize that signature as being on other documents of the Federation—

MR. SYME:

Wait a minute,—

MR. HIRSCH:

Now, make your objection at side bar, if you please.

MR. SYME:
All right.

(Discussion at side bar.)

BY MR. HIRSCH:

Q. Do you recognize this as being the signature which appeared on the various communications of the union?

A. Well, I wouldn't want to say that is William Leader's signature, because I really don't know his signature.

THE COURT:
All right.

BY MR. HIRSCH:

Q. But do you recognize that signature as being the signature which appeared on various—

MR. SYME:
No, the man has answered the question.

MR. HIRSCH:
No.

MR. SYME:
Oh, I am sorry.

MR. HIRSCH:
He didn't answer my question.

BY MR. HIRSCH:

Q. Do you recognize that signature as being similar to signatures which you have seen on official communications of the union from time to time?

A. The signature I generally see on official orders or any official papers coming from the union

for the benefit of the shop, that they read, what went on in the meeting, or anything there, I think is generally signed William M. Leader, if I am not mistaken.

Q. Have you ever seen that signature before?

A. On this card, that is all.

Q. And on any other paper?

A. Not that I recall.

MR. HIRSCH:

Have that marked for identification, please.

(Postal card dated May 21, 1937, from William Leader, addressed to William Meyer, Jr., was marked Exhibit P-25 for identification.)

THE COURT:

Is that all, gentlemen?

MR. HIRSCH:

That is all.

EDWIN MORRIS, having been duly sworn, was examined and testified as follows:

Direct Examination

BY MR. SYME:

Q. Mr. Morris, you are the president of the Radio and Television Workers Union, Local 101, is that right?

A. That is correct.

Q. How many members does your union have?

A. Well, it varies from time to time. At the present we have around fifteen hundred actually working members.

Q. How many did you have in 1937, around May?

A. Approximately seven thousand.

Q. Approximately seven thousand. Where do all of your members work?

A. In the Philco plants.

Q. In the Philco Radio plant, and is the Philco Radio plant near the Apex Hosiery Company?

A. The Philco Radio plants are at C and Ontario and Tioga Streets, and at Front and Venango and at A and Allegheny.

Q. And is that near the Apex Hosiery Company?

A. Well, it is according to what you call "near". It is within ten or fifteen squares.

Q. Northeastern part of Philadelphia,—

A. That is correct.

Q. —isn't that right? Where do you live, Mr. Morris?

A. Why, I live at 3426 North American Street.

Q. That is in the northeastern part of Philadelphia?

A. That is correct.

Q. How many years have you been living in the Northeast?

A. Well, practically all my life.

Q. How long is that?

A. Twenty-eight years.

Q. How many years are you president of your union?

A. Since 1937, of July.

Q. And before that what did you do?

A. I was shop representative, a steward in the plant.

Q. But you worked in the Philco Radio plant, is that right?

A. That is right.

Q. On May 6th, 1937 was the Philco Radio plant out on strike?

A. I am pretty near positive.

Q. Was that a sit-down strike?

A. No, it was not.

Q. Your eight thousand members were not at work?

A. Not any of them.

Q. Not any of them. On May 6th, 1937 where were you around—oh, two o'clock, it doesn't—

A. Well,—

Q. It doesn't matter.

A. Well, I was either at the plant or in the union office. I was either one of the two places practically all the time.

Q. And did you notice anything peculiar at about, oh, two or two-thirty?

A. Well, I can't actually say it was on May 6th or what day it was, but—

Q. Well, the day of the disturbance.

A. Near—

Q. At the Apex.

A. The day of the disturbance at the Apex I was on duty as captain of the picket lines of Plant 2, which is the Philco Storage Battery Company, at C and Ontario.

Q. How many pickets did you have around the plant?

A. Well, we had a change-over of anywheres from eight hundred to fourteen hundred. It varied in days.

Q. And what happened? Go ahead, tell your story.

A. Well, from time to time on the picket line, which I was back and forth from the union office,

which is at Front and Westmoreland Streets, between there and the plant, I had to go to report certain incidents that may happen from time to time, many—many of our members upon leaving the union office had wondered what all the policemen were doing at Front and Westmoreland at the station house. I heard many remarks, such as, "These men are being assembled here for—to go to the Apex plant at Fifth and Luzerne." At the picket lines I heard our members say that they were going there to see just exactly what was going to happen there, because when they assembled all these policemen, why, it looked like some trouble was going to arise there and they would like to see what it was.

Q. And you saw many of them leave the picket line or leave the Philco plant?

A. I have seen them leave the union office saying that they may go there.

Cross Examination

BY MR. HIRSCH:

Q. How many did you see actually go there?

A. I didn't see any of them go there.

Q. And do you—

A. I said they left with the intentions of going there.

Q. And as president of this union—

A. I wasn't president at that time.

Q. Well, as captain at that time of the picket line would you want to say at this time that any members of your union went up to the Apex plant and assisted in breaking into it and destroying it on May 6th?

A. No, I think we have a very good union. I don't

think that our members would involve theirself into something like that, but I do think it is possible that some of our members may have been present at the time the disturbance was caused up there.

Q. But if present they did not participate?

A. I doubt if any of them would do it.

MR. HIRSCH:

That is all.

Redirect Examination

BY MR. SYME:

Q. You are not associated in any way with Mr. Leader, I mean, with the Hosiery Workers union, are you?

A. No.

MR. SYME:

That is all.

FREDERICK S. WEBER, having been duly sworn, was examined and testified as follows:

Direct Examination

BY MR. SYME:

Q. Mr. Weber, are you an employee of the Philco Radio Company?

A. That is right.

Q. Are you an official of the union?

A. Not an official, no.

Q. You are not an official, you are a member—.

A. That is right.

Q. —of the Radio and Television Workers, 101, or 102?

A. 101.

MR. HIRSCH:

That is the same one as Mr. Morris was?

MR. SYME:

That is right.

BY MR. SYME:

Q. Were you around the Apex Hosiery Mill on May 6th?

A. Well, several times we rode around there, and then later on I was—I stopped to pick my wife up. She works at Gibbs, A and Indiana.

Q. Gibbs Underwear?

A. That is right. There is about five I pick up there, my inlaws, so on the way up we stopped at Apex, and then we just kept walking around. I know a lot of fellows up around there.

Q. And did you see any Philco workers there?

A. Plenty of them.

Q. You saw plenty of them.

MR. SYME:

That is all.

Cross Examination

BY MR. HIRSCH:

Q. How many did you see break into the mill and destroy furniture and fixtures?

A. Well, when I got there, why, that was all finished.

Q. So you don't know how many Philco Radio workers were there at the time the mob broke in?

A. No, I don't know that.

Q. And do you think that any of the members of your union would break into the Apex plant and destroy furniture and equipment?

A. Well, I don't know, I mean, I only know them from working, I don't know what they do when they go outside.

Q. What do you think about them? You know them.

A. Well, you can't have an opinion of ten thousand people, I mean, I can't tell what they do when they go outs

Q. But you didn't see anyone—

A. I didn't see any.

Q. —of your members coming out of the mill, did you?

A. No, I didn't see anybody going in, either, I didn't see anybody, they were just all walking around outside.

Q. What time was it when you got there?

A. It was about 5, 5:15.

Q. That was after everything had happened?

A. Well, all the windows were broke as far as I could see.

MR. HIRSCH:

That is all.

Redirect Examination

BY MR. SYME:

Q. But there were plenty of Philco people there, is that right?

A. Well, I saw a lot of people from Fifth and Wyoming, I met a lot of fellows down there that I know, was down there.

Q. Did you see workers from other industries there that you know?

A. I don't know where they work, but they don't work at Apex, because they bum up at Fifth and Wyoming there.

Q. Do you know whether they work as hosiery workers?

A. There may be some, but I don't know all of them.

THE COURT:

Well, now, gentlemen, there is no dispute about the fact there were a very large number of people in that crowd, must have been, who were not Apex employees. Is there any use calling a witness for that?

MR. SYME:

It is not a question of Apex employees, it is a question of whether they were hosiery workers.

THE COURT:

Well, they may not have been hosiery workers.

MR. SYME:

Well, that is not Mr. Hirsch's contention.

THE COURT:

I see your point.

MR. SYME:

It is Mr. Hirsch's contention that this was engineered.

THE COURT:

I see your point. Go ahead.

MR. SYME:

That is all.

Recross Examination

BY MR. HIRSCH:

Q. Wait a minute, you said there were plenty of Philco workers up there. Just tell us exactly—well, not exactly, but as best you can recollect how many you remember seeing there.

A. Well, when you walk around in crowds you aren't bothering to count. You don't expect to do anything like this.

Q. I appreciate—

A. You just say, "Hello, what do you think it is all about?", and all that stuff.

Q. Well, how many times do you recollect, approximately, you said "Hello"?

A. I might have said "Hello" a couple times to the same fellow, I don't know, when walking all around.

Q. How many do you think were up there that you recall of the Philco?

A. I wouldn't give any number, because I never had any occasion to count them.

BY THE COURT:

Q. Well, now, you have some idea. I mean, you know whether there were ten thousand or ten, don't you? Which was nearer the number that you saw there?

A. It was above ten and it was less than ten thousand.

Q. Yes, well, would you say you saw a hundred of your workers there?

A. Well, I don't like to make any particular number.

THE COURT:

Well, your testimony is of very little value if you can't tell us within ten to ten thousand how many were there. Let it go at that if you want to. It is all right.

All right, call another witness.

Redirect Examination

BY MR. SYME:

Q. Can you tell the Court approximately how many people you saw there?

A. Of the crowd?

Q. Yes.

MR. HIRSCH:

No, of the Philco.

BY MR. SYME:

Q. Not of the crowd; approximately how many people you saw—

THE COURT:

Well, he says he can't. I think you better let it go at that. It is all right if he can't.

BY MR. SYME:

Q. —whom you recognized as not hosiery workers.

A. I would say about one hundred, one hundred and fifty.

Recross Examination

BY MR. HIRSCH:

Q. Were they all Philco people?

A. No, wasn't all Philco people.

Q. So including the Philco people and everyone else whom you recognized as not being hosiery workers, you would say one hundred to one hundred and fifty?

A. Probably.

BY MR. SYME:

Q. That was about five to five-fifteen?

MR. HIRSCH:

Let me finish, please.

MR. SYME:

All right.

THE COURT:

Well, now, gentlemen, this witness has been examined and re-examined. I don't think I will hear any more questions.

MR. HIRSCH:

All right.

RICHARD DOYLE, having been duly sworn, was examined and testified as follows:

Direct Examination

BY MR. SYME:

Q. Captain Doyle, you are a captain in the Philadelphia Police Department, is that right?

A. Acting captain of detectives.

Q. Acting captain of detectives. Were you at the Apex Hosiery plant on June 10th?

A. No.

Q. You were not? Were you at the Apex plant on May 6th?

A. No.

Q. When did you first go into the Apex Hosiery plant, Captain?

A. On June—I will have to look at notes.

(The witness consulted notes.)

A. (Continued) June 12th.

BY MR. SYME:

Q. On June 12th. Who sent you over there?

A. The Mayor.

Q. And what did the Mayor say to you?

A. There was rumors around that he—

MR. HIRSCH:

Well, I think this is objectionable, Judge Kirkpatrick,—

THE COURT:

Yes.

MR. HIRSCH:

—the conversation.

THE COURT:

I do, too. You can tell what you did and saw at the plant, but I don't think that—

BY MR. SYME:

Q. What was the purpose of your going to the Apex plant?

A. To report to the Mayor whether or not any machinery had been broken.

Q. And you got to the plant on June 12th, and whom did you see there?

A. At the plant I seen Mr. Etters.

Q. Anybody else?

A. Well, there was quite a few around there but I don't know them by name.

Q. But Mr. Etter is the man whom you first saw,—

A. That is right.

Q. —is that right?

A. Who I saw and spoke to.

Q. Yes, and what did Mr. Etter say to you?

A. I told him my purpose there and he unlocked the door and let me in. I then asked him who he was and what he was, and he explained to me that he was captain of the pickets, of the sit-downers, and that he was in complete charge of the people who were on sit-down strike in the mill at that time and had been since the sit-down strike started.

I said, "Well, you are the gentleman that I want to talk to, and I want you to show me any machinery that has been damaged in this mill within the last couple of days".

BY MR. HIRSCH:

Q. Pardon me, Captain, you are refreshing your memory from some paper?

A. No, not at this minute.

Q. I have no objection if you do.

A. Not at this minute.

Q. All right, when you do will you let me know?

A. Yes, sir.

Q. Because I would like to look at the paper with you.

A. Yes, sir. I asked Etter, was there any machinery damaged in the plant on the fourth floor?

He said, yes, there had been considerable damage done to the machinery, the needles had been broke on quite a number of machines.

I asked him to take me to the fourth floor where the damage was done. He and several others, who I don't know their name—I think one name was Cherry—took me to the fourth floor, where I examined the machinery that was broken. There were quite a number of machines with the needles broken and bent over. There was stockings coming out of the machines, and the needles—broken needles had fell on them, it was damaged, the goods coming out of the machine, which I take it was in manufacture at the time.

I checked the machines, took the numbers of them and the number of heads and other things about the machines, the names of which Mr. Etter told me the names, what they call them in the hosiery industry, made a count of them, and then had a talk with Mr. Etter.

I asked him would he—would he be satisfied to tell me what he knew about the damage to the machinery and give me some idea, if he had any ideas, as to who, when and why it was broken.

He said he had no objections. I had a stenographer, a police stenographer with me at the time, together with two other detectives. We sat on the fourth floor. Before we started to talk we had went

to the third floor, where there was—I will have to look at notes to tell you the exact numbers of—

THE COURT:

I don't believe we need the exact numbers. You go ahead and tell your story. Condense it as much as you can, Captain. I don't think we need that.

A. (Continued) After examining the machinery on the third floor, there was a small number of machines damaged there compared with the fourth floor, I sat down and had a conversation with Etter. This conversation was taken down in writing. He told all—

MR. HIRSCH:

Now, just a second, please. I object to any conversation that took place between Captain Doyle and Mr. Etter when there was no representative of the plaintiff company there. It does not go to the res gestae, and Mr. Etter may have made any declaration that day without our being in any position to refute.

THE COURT:

I think that is a sound objection.

MR. SYME:

All right.

THE WITNESS:

He told in a—

THE COURT:

No, that has been sustained.

THE WITNESS:

I beg your pardon.

MR. HIRSCH:

It has been ruled out as to what he said.

THE WITNESS:

I didn't hear him, I beg your pardon.

THE COURT:

Not what he said.

BY THE COURT:

Q. What did you do in pursuance of what you talked about with Mr. Etter?

A. I reported it to the Mayor.

Q. Did you do anything else at the plant?

A. Other than take this statement from Mr. Etter.

Q. That is all you did?

A. That is all.

THE COURT:

All right.

BY MR. SYME:

Q. Did you try to take fingerprints?

A. Yes, sir.

THE COURT:

That is what I was referring to.

BY MR. SYME:

Q. And did Mr. Etter offer you full cooperation on that score?

A. Mr. Etter explained to me that this damage had happened a couple days before I was in there. He explained that they—

MR. HIRSCH:

Please, Captain, don't tell us what he said.

THE COURT:

Yes, I don't think you can tell us what was said there.

A. (Continued) Well, he showed me a lot of papers that he had taken fingerprints, and he at that time stated that they were the fingerprints of everyone in the mill.

BY THE COURT:

Q. Did you take any fingerprints?

A. No, sir.

Q. Did he give you those papers?

A. Gave them to me for examination.

THE COURT:

I see. All right.

BY MR. SYME:

Q. Did he ask you to take fingerprints?

A. Yes, yes, sir.

Q. And you didn't take fingerprints? Why, Captain?

A. Well, I am not—

Q. You are not a fingerprint expert?

A. I am not qualified to take fingerprints.

Q. Yes.

A. But I did send for a fingerprint expert, who came to the mill in half an hour's time, and examined the prints that Mr. Etter gave me for examination. Our fingerprint expert said they were of no value.

The fingerprint expert then examined the ma-

chines that were damaged, in an effort to take fingerprints, and these machines being covered with a film of oil, he then said that it was impossible to take a fingerprint from them.

Q. Now, the fingerprints—oh, I am sorry, Captain, I didn't want interrupt you.

A. Etter had a three-cornered paint scraper which for some reason or other he believed that was the instrument used in doing the damage to these needles. Our fingerprint expert examined that, which also was covered, soaked with oil, and of no value

At that time our fingerprint man, who was an expert with twenty years' experience, said that it is impossible to take a fingerprint off any of the machines or any part of the machinery, due to the fact that they were all covered with oil.

Q. Now, Captain, when Etter gave you the fingerprints did he give you the fingerprints of all of the people in the mill?

A. Well,—

MR. HIRSCH:

If you know, Captain.

THE WITNESS:

I don't know.

MR. SYME:

Yes, if you know.

THE WITNESS:

I don't know whether they were their fingerprints, but these fingerprints that he had were taken in a way that it was an amateur taking them, not the way that regular fingerprints are

ruled by the police or fingerprint experts, by fingerprint experts.

BY MR. SYME:

Q. Yes, but do you know whether they were the fingerprints only of the maintenance people or whether they included the fingerprints of all or a substantial number of sit-downers.

MR. HIRSCH:

Now, Captain, you are asked a question—

THE WITNESS:

That I don't know.

MR. HIRSCH:

All right.

THE WITNESS:

I don't know that, whose fingerprints they were, if anybody's. In fact, they didn't look like fingerprints, they were taken in such poor shape.

MR. SYME:

That is all. Cross examine.

MR. HIRSCH:

No questions, Captain.

THE COURT:

The Court will recess for ten minutes.

(Recess at 3:15 o'clock P. M.)

THE COURT:

Members of the jury, I have asked counsel to spend the balance of the afternoon conferring with me in chambers in an effort to go over the testimony that still is to be offered, to see whether it can be shortened by the elimination of some of it which would be largely repetition, and I believe that we can save a great deal more time for you and for all of us by spending the next hour in that way rather than by going on with the case here, and I don't think that I will ask you to sit tomorrow. I think that we are all of us pretty well saturated with the case, and possibly a little tired, and so I will ask you to come back here and be in your places Monday morning at ten o'clock.

Now, please remember the caution that I gave you, I don't need to repeat it, but be very careful about it, because any indiscretion on the part of any of you might result in a mistrial and cause a complete loss of all the time and money that has already been spent in trying this case, so be on your guard and don't permit anyone at all to talk to you about the case, in any phase of it.

You may adjourn until Monday morning at ten o'clock.

Adjourned until Monday, March 20, 1939, at ten o'clock A. M.

In The

DISTRICT COURT OF THE UNITED STATES

For the Eastern District of Pennsylvania

No. 19950 March Term, 1937

APEX HOSIERY COMPANY, a Pennsylvania Corporation

vs.

WILLIAM LEADER, ET AL.

Before: Hon. WILLIAM H. KIRKPATRICK, *J.*, and a Jury.

Philadelphia, Pa., March 20, 1939

Sixth Day

Present:

SYLVAN H. HIRSCH, ESQ.,
ARNO P. MOWITZ, ESQ.,
SUNDHEIM, FOLZ & SUNDHEIM, ESQS., representing the Plaintiff.

M. HERBERT SYME, ESQ.,
BENJAMIN R. SIMONS, ESQ.,
MAURICE ABRAMS, ESQ.,

ARTHUR V. MEIGS, ESQ.,
SYME AND SIMONS, ESQS.,
ISADORE KATZ, ESQ., representing the Defendants.

Defendants' Evidence (Continued)

THE COURT:

All right, gentlemen, we are ready to proceed with the Apex Hosiery matter.

MR. SYME:

Your Honor, will you see us at side bar for a moment?

THE COURT:

Yes, all right.

(Discussion at side bar.)

MR. SYME:

Your Honor, will you grant us a recess for five minutes? We would like to talk to our principals.

THE COURT:

All right. I think we might suspend until 10:30 this morning.

(Recess at 10:10 o'clock A. M.)

MR. SYME:

Mr. Meyer. Calling Mr. Meyer for cross examination.

THE COURT:
Very well.

MR. HIRSCH:
You mean as for cross?

MR. SYME:
As for cross examination.

MR. HIRSCH:
As for cross.

WILLIAM MEYER, recalled.

Cross Examination

BY MR. SYME:

Q. Mr. Meyer, you are a member of the Full Fashioned Hosiery Manufacturers of America, isn't that right?

A. Yes.

Q. And the Full Fashioned Hosiery Manufacturers of America and the American Federation of Hosiery Workers are under contract, as far as you know?

A. I understand that is right.

Q. And what is the Full Fashioned Hosiery Manufacturers Association, just briefly, in general?

A. An association of manufacturers.

Q. Yes, and you enter into contractual relationships with the union, is that right?

A. Yes, since I signed the agreement—

Q. That is right.

A. —with the union.

Q. That is right. Prior to that, of course, you did not.

A. Prior to that I was no member of that association.

Q. And you are bound by this contract that has been entered in 1938, is that right?

MR. HIRSCH:

Now, I am going to object to this line of questions, from here on, because it has no relevancy to this case. He is now talking about matters which occurred long after this particular incident. It has no bearing on the case, no relevancy,—

THE COURT:

Well, apart from that,—

MR. HIRSCH:

—and I object to it.

THE COURT:

—it has already appeared a number of times in evidence that the Apex Hosiery Company now has a contract for a closed shop with the union.

MR. HIRSCH:

Yes.

THE COURT:

And if that is all that we are getting at I wouldn't say it was necessary to go any further. That is in evidence now.

MR. SYME:

No, we are going beyond that, Your Honor.

MR. HIRSCH:
That is what I object to, sir.

THE COURT:
Well, I don't know what the purpose is, I can't say.

MR. HIRSCH:
May we have an offer of proof at side bar?

THE COURT:
Yes.

MR. KATZ:
May I state, if Your Honor please, that this is preparatory to a motion that the defendant intends to make?

MR. HIRSCH:
May I have that at side bar too?

MR. KATZ:
The motion?

MR. HIRSCH:
Whatever you intend to do.

MR. KATZ:
I don't think so.

THE COURT:
Well, let's proceed a little with the agreement, see where it gets.

MR. HIRSCH:
I think it is totally irrelevant.

THE COURT:
It may be, I can't tell yet, until I hear a little more about it.

BY MR. SYME:

Q. When was the last agreement executed between the Full Fashioned Hosiery Manufacturers Association—that is, the Full Fashioned Hosiery Manufacturers of America—and the American Federation of Hosiery Workers?

A. You mean the three-year agreement?

Q. That is right.

A. I think it was August 31, 1938, if I remember correctly.

Q. It is July 15, 1938, isn't that right?

A. No, I thought it was August 31st.

Q. It became effective August 31st, but it was executed on July 15th,—

A. That may be correct,—

Q. —1938?

A. —yes.

Q. You are bound—

MR. HIRSCH:

Now,—

BY MR. SYME:

Q. —by all of the terms and provisions of that agreement, isn't that so?

MR. HIRSCH:

—I ask for an offer of proof at side bar, Judge Kirkpatrick.

MR. SYME:

Your Honor, I will be through in a minute.

MR. HIRSCH:

I don't know where they are going, or how

far. I think that it is my privilege to have an offer of proof and have you pass on the propriety of it.

THE COURT:

Yes, I think so.

(The following occurred at side bar:

MR. KATZ:

Defendant offers to prove that in the contract in existence, and binding, in existence between the union and the plaintiff, there is a clause which provides as follows:

"The impartial chairman shall have jurisdiction of and the duty and power to decide and adjudicate all matters in dispute between the union and the association and/or members involved, and the union and the association and/or member agree to be bound by and abide by the decisions of the impartial chairman".

MR. HIRSCH:

Now, that is objected to.

MR. KATZ:

That is the offer of proof.

THE COURT:

Well, I don't see that it can do any possible harm if there is a legal question involved.

MR. KATZ:

There is a legal question.

THE COURT:

Let's get it in the record and dispose of it. I see what the point they are making is. I will

permit you to show that term in the agreement. If it is irrelevant I won't permit any argument to the jury to be based on it. In other words, it really ousts the jurisdiction of this Court—

MR. KATZ:
That is correct.

THE COURT:
—if you are correct. Why don't you concede here at side bar there is such a term in the agreement?

MR. HIRSCH:
All right. That will end the argument.

THE COURT:
All right, Mr. Hirsch concedes that there is such a term in the agreement and that the defendants are bound by the agreement.

MR. HIRSCH:
Are parties.

THE COURT:
That is, are parties to the agreement.

MR. HIRSCH:
But I object to the relevancy of it and the admissibility of it,—

THE COURT:
I understand.

MR. HIRSCH:
—and ask for an exception.

THE COURT:

Oh, I understand. That will have to be taken up on a point.)

MR. SYME:

That is all, Mr. Meyer.

MR. KATZ:

Now, if the Court pleases, the defendant moves in accordance with the provisions of Section 3 of the Act of February 12, 1925, 43 Statutes 83, that the action or proceedings presently before the Court be stayed and the matter be referred to arbitration in accordance with the agreement between the parties hereto, which provides in accordance with the offer of proof and admission made at the bar of the Court.

THE COURT:

Let me see the Act.

Well, the motion is denied at the present time. We will conclude the testimony on the matter of liability, permit it to be renewed, and consider it after the conclusion of the testimony.

MR. HIRSCH:

I think it is obvious, if Your Honor please, that the new agreement of '38 and its provisions only applied prospectively, and cannot possibly apply to any preceding actions that were taken.

THE COURT:

I am not making any ruling, I am merely

overruling you at the present time, with leave to renew it when the testimony is closed.

MR. SYME:

With this, Your Honor, the defense rests as to liability.

Plaintiff's Evidence in Rebuttal

MR. HIRSCH:

Huey Brown; calling this witness as for cross examination, he being a party to the action.

THE COURT:

Very well.

ULYSSES G. BROWN, recalled.

Cross Examination

BY MR. HIRSCH:

Q. Mr. Brown, will you produce the minutes of the regular membership of Branch 1 for the year 1937?

(The witness produced the minutes.)

BY MR. HIRSCH:

Q. Do you have the minutes before you of the meeting of the general membership of Branch 1 held on September 11, 1937?

A. I have.

Q. And will you produce them, please?

THE COURT:

What is the date?

MR. HIRSCH:

September 11, 1937.

(The witness produced the minutes.)

BY MR. HIRSCH:

Q. Is this the general membership?

A. That is right.

Q. Do you have here the report that Mr. Leader made to that meeting? There was a report made to that meeting, excerpts of which have been given me by the Special Master appointed by this Court.

A. There is no record of a report in the minutes.

Q. It is the regular meeting. Look at the meeting of your executive board and see if you incorporated therein a report of what transpired at your general membership.

A. About that time?

Q. At September 11th. Look at both. I will show you what I am looking for. Maybe that will help you; that excerpt.

(A paper was shown to the witness.)

MR. HIRSCH:

Counsel for your union has agreed that I may show you this copy, and you agree that that is an excerpt from the minutes of the reg-

ular membership meeting of Branch 1 of September 11, 1937.

MR. SYME:

That is correct.

THE WITNESS:

Just the part marked in red pencil?

BY MR. HIRSCH:

Q. Yes, you kept those minutes, did you not?

A. That is right.

Q. Now, read the minute you have regarding what Mr. Leader is purported to have said to that meeting, which I have underlined in red pencil.

A. "My next suggestion is to do away with the kitchen immediately. Now that all the strikes are being conducted on the outside,—"

Q. You keep the minutes of all the meetings, do you not, both regular membership and executive board?

A. That is correct.

Q. And at succeeding meetings do you read the minutes of the preceding meeting, as Mr. Leader has testified is done?

A. That is correct.

MR. HIRSCH:

I offer that excerpt in evidence as being an excerpt from the minutes of the regular membership meeting of Branch 1, dated September 11, 1937, in which William Leader is reported to have said:

"My next suggestion is to do away with the

kitchen immediately. Now that all the strikes are being conducted on the outside, I do not believe it is a practical thing from a financial end to keep this kitchen going."

BY MR. HIRSCH:

Q. I show you a report on what purports to be a report of the executive board meeting of the Federation of Full Fashioned Hosiery Workers, dated July 13, 1937. Is that a mimeographed copy of the report of that meeting and prepared by your union?

THE COURT:

July what?

MR. HIRSCH:

13. 1937.

(A paper was shown to the witness.)

A. I don't recall a report of this sort being given out from the executive board. This was not the custom.

BY MR. HIRSCH:

Q. Well, now, just take a look at that. Who prepared that? I don't say whether it was given out; was there such a report prepared?

A. I couldn't say.

Q. Well, was it the practice of the union to prepare mimeographed copies of a report? Did you ever see reports of that kind—

A. Not that I recall.

Q. —before? Where do you think that report came from? Have you any idea?

A. I haven't the slightest idea.

Q. Will you produce the minutes of the executive board meeting of July 13, 1937?

MR. HIRSCH:

I am showing the witness—when I said the report—Plaintiff's Exhibit 21 for identification.

MR. SYME:

What date is that?

MR. HIRSCH:

July 13th.

BY MR. HIRSCH:

Q. Do you have those minutes?

(The witness produced minutes.)

BY MR. HIRSCH:

Q. This is the executive board?

A. That is right.

Q. What does 37 H-31 mean in the upper right-hand corner?

A. I couldn't tell you.

Q. Who else other than yourself might prepare such a report for the union of a meeting that was held, in which the details of that meeting are given?

A. I don't reacll of any reports made of—of the details of meetings, or any general report of meetings that might be made.

Q. Do you recall whether or not there was a meeting held at any time in July of 1937 where the question of bills was voted upon, including the doctor's fee during the sit-down strike, a bill for the Bell Telephone, bill for Remington-Rand, and office supplies? Do you recall—

A. Well, they are—they are general bills and we have that type of bill almost every meeting. I couldn't say whether on a certain date that that type of bill had been voted upon.

Q. Do you recall a meeting in July where the question of one hundred girls present from the Quaker Hosiery Company was taken up, their case being taken up?

A. I do not.

Q. Where they contended that they had been fined by the Quaker Shop Association? Do you recall that controversy?

A. No, I can't recall; although—although we have had—that is the general business of the union, cases of that type. It may have been, I can't recall.

Q. Do you recall making a motion that the Quaker members retire upstairs and hold a meeting of their own to determine whether or not they should pay the one dollar fine, you having made that motion?

A. I don't recall it.

Q. Do you recall any meeting where the Torresdale Sit-down Strike String Band then entertained the members with a thirty-minute program of songs and music.

A. No, not to my knowledge. Do you—pardon me—do you say that there is a note in there that I made a motion?

Q. Yes, Brown.

A. There is no—we never—during 1937 we didn't at any time that I recall put the names of motion makers on the books.

Q. A motion was then made by Brown,—

A. It is a recent procedure.

Q. —which says that the Quaker members go upstairs.

A. That wasn't the procedure of '37. It is a recent procedure in the union.

Q. And, therefore, you never saw this before?

A. I don't recall having seen that.

MR. HIRSCH:
That is all.

MR. SYME:
No questions.

MR. HIRSCH:
I offer at this time exhibits that were previously marked for identification, the first being the bill of Weil's Curiosity Shop dated May 7, 1937, as Plaintiff's Exhibit 20, and the next, Mr. Leader's message to hosiery workers, previously marked for identification as Plaintiff's Exhibit number 19.

MR. SYME:
Wait a minute, wait a minute, that wasn't proved, Your Honor, we object to its admissibility.

MR. HIRSCH:
He admitted sending this letter out to all of the workers.

MR. KATZ:
Mr. Leader?

THE COURT:
Which letter is that? I don't recall.

MR. HIRSCH:
That is that message, that he had political affiliations.

THE COURT:

I think he did. That is correct, isn't it?

MR. KATZ:

I don't remember.

THE COURT:

Well, it may be on my notes, I don't know. No, I haven't got that.

MR. HIRSCH:

And my offer of this letter is for the limited purpose of proving the line of cross examination that I conducted with Mr. Leader as to political affiliations, and I have already, I think, stated of record the particular excerpt from this report for which purpose the offer of this document is made, namely, to prove that that excerpt was contained in the report.

MR. KATZ:

That's right.

THE COURT:

All right.

(A copy of Exhibit P-19 follows:

Exhibit P-19

"ATTENTION—

HOSIERY WORKERS

A PERSONAL MESSAGE TO HOSIERY WORKERS FROM YOUR PRESIDENT, WILLIAM M. LEADER

I believe at this time a brief summary of your trade, including the happenings of the past

year, the present crises in your industry, and your future prospects is in order, along with one or two other incidents that are of interest and of importance to you as a member of the Union and depending on the hosiery industry for a livelihood.

Since January, 1937, there have been the following thirty-seven (37) manufacturing plants signed up with the Local under closed shop agreements for the first time in the history of the industry.

Alex	Jolly	Strahan
Arlington	Lafayette	Sunrise
Artcraft	Lucille	Sutro
Bamback	Marnet	Tackawanna
Brooks & Anderson	Martha	Triangle
Collins	O. K.	Venus
Danita	Opal	Whitehall
Diana	Penn Rose	Woodland
Fahrback	Richardson	(New closed shop agreements in about eight (8) finishing plants.)
Federal	Lee I. Robinson	
Fox Chase	Rodgers	
Integrity	Schuster	

In addition new closed shop agreements were signed in such shops as the Quaker—an agreement in the Apex which will turn out to be a closed shop agreement before March and where we now have two thousand members out of two thousand five hundred on the check-off.

An accurate check-up shows since January more than seven thousand new members in our Local—signed agreements with ninety-three

hosiery mill and finishing and dyeing plants—involving more than fifteen thousand members.

Without going into specific details, there have been strikes settled lasting from one hour up to seven months. Some which were as vicious as any ever experienced in the hosiery industry. The Union did not lose one strike and in that whole nine-month period not more than ten members of the Union were arrested—all of these minor charges, and that proves, if nothing else, that all strikes were conducted in a legal, peaceful manner by the Union and resulted in complete organization and collective bargaining in all these Philadelphia shops.

Strikes still in progress are Brownhill-Kramer and Oswold and Crystal shops, involving about 500 workers.

The next move, I believe, and one that is important, is to retrench where necessary and also hold the gains we have made in a practical manner.

I know the members pay high dues and assessments. I know they are anxious to have these assessments reduced as fast as possible. The feeling of all of us on this point seems to be unanimous. In line with these thoughts, I make the following suggestions as a plan to hold our gains and run our Union on a practical basis, from personal observation and from the one who took the entire responsibility for your recent organization drive:

We had a group of about twenty-five organizers and trustees who have done yeoman serv-

ice in the past year in all the strike situations. The names of these members should go into the Union records as a memory for all old and new Union members to remember. Men who have put in hours of hard work each day and every day of the week—sacrificed health in some cases—always rushing danger, with but one goal in mind, win whatever strike they were assigned to at that moment. True, they were paid their average mill wage while on the job, but no money could ever buy the courage and effort these men put into their work to win a 100% organized industry for the Hosiery Workers in Philadelphia.

But now their task is about completed. Some have jobs to go back to, others have not.

These men, take my word for it, deserve every consideration the Union can give them! I would suggest that the Union instruct me to send a letter to President Rieve of the Federation asking him to consider the names of all the men who did organization work for the local as prospective organizers for the Federation.

I also want to take this time to thank the other members of the Local who acted as part-time organizers and those that were voluntary organizers. Without the help of all, including other members who came around the strikes from time to time and offered encouragement, we could never have achieved our accomplishments.

I want to bring out that in order to hold our shops in line, give them service which they are entitled to, so that Union rules are adhered to,

Union conditions upheld, grievances taken up in the proper manner and at the proper time, and so we are assured that Union rates at all times prevail, I believe and suggest that we divide Philadelphia in six (6) districts; and install six District Stewards to be paid at the rate of $50.00 per week and $5.00 weekly car allowance—to be under the direct supervision of the President of the Branch; and, to make a written weekly report to the President of the activities of the various shops in respect to how they are working, grievances taken up by him and the shop committee, their settlement or otherwise, to cover each shop meeting of the respective shops and give them reports of educational value in the trade movement in general and hosiery in particular.

I suggest the following districts and the shops they should contain. From personal contacts I know these districts could be covered by one man, always, of course, with co-operation and advice from the President and Vice-President. There will be plenty of work to keep a man busy.

1st DISTRICT—A

	Shop	Employees
1.	H. C. Aberle	900
2.	Alex	35
3.	Brooks & Anderson	70
4.	Brownhill & Kramer	300
5.	Danita	275
6.	Jolly	25
7.	Interstate—H. and Lycoming Sts.	207
8.	Westmoreland	700

	Shop	Employees
9.	Integrity	46
10.	Richardson	18
11.	Arlington	56
12.	Sutro	220
	Total	2852

2nd DISTRICT—B

1.	Apex	2300
2.	Co-Ed	152
3.	Ducille	181
4.	Opal	106
5.	Tabor	170
6.	Martha	48
7.	Bamback	15
8.	Deal	76
9.	Diana	107
10.	Fahrback	22
	Total	3177

3rd DISTRICT—C

1.	Gotham	1050
2.	Courtland	650
3.	Cambria	85
4.	Gold Crest	100
5.	Gray Dot	13
6.	LaSalle—Endurance	85
7.	Fox Chase	253
8.	Woodland	50
9.	Rockledge	52
10.	Sunrise	65

	Shop	Employees
11.	Tackawanna	61
	Total	2464

4th DISTRICT—D

1.	Artcraft	650
2.	Collins	50
3.	Daintyfoot	50
4.	Concordia	320
5.	Federal	150
6.	International	33
7.	Marnet	150
8.	Penn Rose	82
9.	Park	16
10.	Schuster	116
11.	Ruby Ring	250
12.	Superior	110
13.	Dragon	56
14.	Fashionmaid	116
15.	VanKirk	110
16.	Woehr & Thomas	30
17.	Venus	48
	Total	2337

5th DISTRICT—E

1.	Roxboro Hos. Co. (3 shops) 2nd and Boulevard Palethorpe and Huntingdon I and Ontario	725
2.	Quaker	625
3.	Rodgers	219
4.	Robinson	450
5.	Strahan	109

	Shop	Employees
6.	Whitehall	308
7.	Triangle	28
8.	Minisac	107
9.	Nickels & Lauber	134
10.	O. K. Hosiery Co.	104
11.	Lafayette	35
12.	Haines	16
	Total	2860

6th DISTRICT—F

Commercial Finishing Shops

1.	Allegheny Finishing Co.	60
2.	Ardlin Finishing Co.	5
3.	Bailey Dye Works	60
4.	Barsol Hosiery Finishing Co.	54
5.	Chapman Dye House	2
6.	Clover Finishing Co.	29
7.	Colonial Finishing Company	100
8.	Christos Dye Works	17
9.	H. & M. Finishing Company	104
10.	Dickerson Finishing Company	6
11.	Keystone Dyeing Company	13
12.	Lee Dye & Finishing Company	105
13.	McCaulley Dyeing & Finishing Co.	57
14.	Precision Finishing Company	4
15.	Ray Finishing Company	12
16.	Thomas Sager Finishing Company	60
17.	Schneider Dye Works	77
18.	Superior Finishing Company	23
19.	Sylvania Dye Company	12

Shop	Employees
20. Triplewear Hosiery Dye. & Fin.	141
21. Universal Hosiery Finishing Co.	60
Total	1001

Next I suggest that the Local move their offices from the Sourth Street Hall to some place in the vicinity of Torresdale Avenue—more to the heart of the hosiery industry. The Union office has outgrown the space allotted to it. Girls fall over each other. Space for everyone is cramped. The officers have no room to meet committees from time to time. As one who has been in scores of offices, there is and can be no way to run an efficient office in an over-crowded hall such as this one. Of course, the model idea would be a new hall, big enough to house 15,000 members, representing 93 shops, but until members become new-hall conscious, I don't think the Local can afford to go on doing business in an over-crowded office. I urge a committee to be appointed to secure another location for the Local offices.

I think with the ninety-three shops having meetings from time to time it is not fair that any shop be on anything but an equal basis. I think the Union Hall should only be used for shops that have not as yet a shop treasury. After that, each shop using a Local meeting room should rotate with other shops so that all may share equally in the free use of the Union Hall. This will make the members realize the

value of permanent headquarters, large enough to house all.

I suggest the Vice-President of the Local should be assigned the duties of preparing cases to go before the Impartial Chairman. Also to cooperate and assist District Stewards wherever possible; co-operate with the President in carrying out the policies of the Local and act in the capacity of the President in his absence.

The President should have complete charge of all organization work; co-operate with the Vice-President wherever possible in presenting Impartial Chairman cases; see that the National Agreement is enforced; have complete jurisdiction over the District Stewards; take charge of the Local's legal questions; spend as much time as possible in furthering C. I. O. advancement in Philadelphia; and in general, keep track of conditions and trends in the hosiery industry for the benefit of the membership.

The Tuesday night Executive Board meeting should be open to all members that want to listen without voicing or voting their opinions.

Grievances which take up most of the Board's time should and could be eliminated in the following manner:

(1) I suggest that under a District Steward set up most of these grievances could be taken up and settled with shop committees and the district steward, and he in turn could notify the President or Vice-President of the grievance, who would file for an Impartial Chairman hearing without taking up the time of the Board.

All other grievances to be acted on at a regular meeting.

The Board should function promptly at 8:15 P. M. sharp and adjourn at 11:00 P. M. This can be done! A wide-awake and intelligent Board would function in this manner.

I believe regular Local Union meetings should be held each Saturday morning. BECAUSE we should strive to promote educational and social activities, athletic promotion, political interests, and the study of economic problems.

We will be faced with an economic situation for some time. While we can force local companies to sign labor contracts we must always be wise in the amount of increase wages we ask for as long as there are a number of employers out of our range throughout the country.

More union reasoning and work has to be done along the line of promoting industry agreements, policies, and bargaining than on the line of shop by shop agreements. We are trying to develop this system by attempting to secure a merger of the former Northern Non-Union Group of Manufacturers along with the so-called Haines group, so that we have by far, a larger representative group to deal with when the National Agreement runs out in September, 1938.

We must carefully watch the A. F. of L. vs. C. I. O. war, which, while unfortunate from many angles to the deep thinker, I feel sure it will reveal to some extent, that it has helped to organize thousands of members. Just like

every other fight, it keeps the organization spirit of both C. I. O. and A. F. of L. at a high pitch, letting neither side let down for one minute for fear the group may disappear and be absorbed by the victorious side. So, I do not fear this fight in the long run as ultimately peace must come; and when it does between the two groups, perhaps, while some leaders may suffer set-backs, surely the rank and file of the labor movement will be stronger by far than if the fight had never taken place. After a two-year struggle between the A. F. of L. and the C. I. O., we find A. F. of L. increased their membership from three to four million and the C. I. O. from scratch to four and one-half million. Those figures explain labor's gain because this fight, more than anything else, has made the Labor Class organization conscious.

Locally we must continue to do our share in the C. I. O., for like every other community we are affected by wages and conditions in surrounding industries. In Philadelphia the Hosiery Workers Union with their fifteen thousand members are looked upon as the strongest local union in the city and state.

Now to a little more personal atmosphere. Many members no doubt have wondered why I have accepted a post in Mayor Wilson's cabinet as Assistant Director of Public Welfare of Philadelphia. A natural question and one that should be answered. One of the greatest reasons, if not the greatest, for the complete organization of the hosiery industry in the past year has been the political affiliations, political

prestige and contacts that I have built up throughout the city for our Union through political activity. First, in my whole-hearted support as the lone Labor Leader in Philadelphia to back Wilson when he ran for Mayor, and no truer liberal has ever headed a city administration than Mayor Wilson. My active campaign last year as a candidate for congress on a Farmer-Labor ticket, where I received more than 10,000 votes in the 5th district on a split ticket! My active support of President Roosevelt at all times, and in the past election stumping for and supporting the Democratic candidates in Philadelphia and backing the sitting judges.

These three years of active participation have had their effect on both major parties. Both parties have offered me jobs at different times. I have turned down all opportunities, as I refuse to pledge myself to be either a Democrat or a Republican. I will follow and support a liberal man or a liberal party. Now with a strike of capital on against Congress, with business in general receding rapidly, with the hosiery industry hard hit, and, especially in Philadelphia, with the C. I. O. and A. F. of L. continuing a fight with each other instead of combining together to fight to get our wage and hour legislation which we need, we have got to use every bit of strategy we can to hold our mills here and keep our people working.

Therefore, a position of a Union official in the Mayor's cabinet in a department so close to the people can not hurt the Union, but on the other hand should place labor in a little more inti-

mate position to take advantage of current opportunities that will benefit your industry.

The titles or jobs that your President now holds are, President of your Union, President of the Philadelphia C. I. O., Member of Mayor Wilson's City Financial Advisory Committee, Chairman of Mayor's Labor Board, and Assistant Director of Public Welfare of Philadelphia.

Since accepting this last position I have had reaction on the following criticism. Leader holds two jobs. Leader is running out on the hosiery workers.

From the above you can see I don't hold two jobs. I hold five. The one source of worry of those who criticize seems to be that the last one carries a salary! My intentions on this are as I explained to the members at the shop meetings and the Union meetings. I will collect one salary, the same amount I get from the Union. I will collect this from the City. If my City salary is not equal to my Union salary, I will take the difference from the Union along with my expenses on both jobs. Under this system I will be able, I estimate, to turn back to the Union each week one half or more of my Union salary to be used to further the organization work we need.

This perhaps is the first time that a labor leader will relinquish salary on a set-up of this kind, but I am always glad to set a precedent where a Union benefits. Of course, I hope all the members understand there is no salary at-

tached to the job of President of the C. I. O., Chairman of the Mayor's Labor Board, or Member of the City Finance Committee, just a lot of hard work.

I am not accepting this position for personal reasons and will only serve as a representative of organized labor. I have always believed that it was necessary for labor representatives to become part of local, state and national affairs.

The Welfare Department was set up for the working class and consequently it offered the best possibilities for a labor leader to serve his people in local government.

My first and only duty is to the labor movement, and if my duties in the Welfare Department in any way interfere with my labor activities, I will, of course, resign my city post.

My only obligations are to my fellow-trade unionists and my actions will at all times be governed by them. No individual or political group on the outside will ever halt me in fighting for the interests of the labor movement.

I stand finally on this promise. At any time, on the demand of the membership, if they feel the Union is not the one that is gaining by my activities on their behalf, to resign from one or all jobs.

And now a few words on the immediate future for your industry of hosiery in Philadelphia. Many mills are striving at the bit, trying to find a way to get out of Philadelphia. Your Union is the only thing holding them here. Keep your

Union strong. Keep it united. Function as one Union, or inside of a year you won't have ten shops left here. Insist your officers at all times paint a clear picture of facts to you. Insist they take the responsibility at all times of suggesting to you your next move to hold your trade here, for an officer is always in a better position to advise than a worker in a mill. Elect officers you have confidence in and then give them the confidence necessary to stand up at all times with the feeling they have it. That, members, is your only hope in the next year to hold your industry here. No one can predict how far this business recession is going. Hosiery, I do know, is being sold and will be sold in the next year in millions of dozens. You must see that you get your share of work.

That job is going to be one of the grave responsibilities of your elected officers of 1938.

These are my reactions, after a hectic year of terrific strain on all of us, as to the best and most practical way to get the best ability out of all of us, individually and collectively, for the coming year with the least cost to the membership, with the elimination of the temporary assessment as the important aim, and, yet, without at any time losing sight of the fact that we, who are the active heads of a Union with the livelihood of fifteen thousand members and their families, as our responsibility.

I sincerely ask the combined membership of Branch 1, whom I hope will each receive a copy of this outline, to receive and ponder and act

on these statements in as serious a frame of mind as I have presented them to you.

Fraternally yours,

Wm. M. Leader.
President.

Full Fashioned Hosiery Workers Union,
Branch 1, Philadelphia.")

(A copy of Exhibit P-20 follows:

Exhibit P-20

"Buy, sell, exchange, import and export all articles of value

Philadelphia, Pa., May 7, 1937

M Full Fashioned Hosiery Workers Union
2530 N. 4th Street Phila., Pa.

Debtor to
WEIL'S CURIOSITY SHOP

Benjamin Weil, Proprietor
20 South Second Street

Warehouses—9 and 12 Strawberry Street
Bell Phone, Lombard 4410 13 Entire Floors
and 3 Basements

"At The Sign Of The
Old Spinning Wheel"

"Spin Around and See Us" Terms: Net Cash

"ANTIQUES, Andirons, Boat Supplies, Binoculars, Cameras and Lenses, Motion Picture Machines and Films, Carpets and Rugs, wholesale and retail; Check Writers and Adding Ma-

chines. Musical Instruments, Victrolas, Disc and Cylinder Records, Radio Receiving and Transmitting Sets, Curios, Revolvers, Rifles, Guns, all makes. Spark Guards and Fire Sets, Household Furniture, Trunks, Traveling Bags, Typewriters, Tents and Tarpaulins, all sizes. Sporting Goods, all kinds. Flags, all sizes.

200 Cots	@ 2.50	500.00	
200 Pillows	@ .50	100.00	
406 Blankets	@ 1.00	406.00	1,006.00

(CORRECTED BILL)

Paid

Check #
#1556")

MR. HIRSCH:

Mildred Kelly.

Pardon me, may I make a note of record at this time, Judge Kirkpatrick, to be incorporated with my other objections? A further objection to the admissibility of the excerpt from the agreement is the fact that the agreement as to which Mr. Katz made an offer of an excerpt, which was to become effective—when, August 31st, 1938?

MR. SYME:

That is right.

MR. KATZ:

That is right.

MR. HIRSCH:

—was an agreement between the Full Fashioned Hosiery Manufacturers of America, Inc.,

a corporation organized under the membership corporation law of the State of New York, and the American Federation of Hosiery Workers, an unincorporated membership association, which is the national union,—

THE COURT:
Yes, I understand.

MR. HIRSCH:
—and the local branch is not a party to it.

MR. SYME:
Oh,—

MR. HIRSCH:
By name.

THE COURT:
All right.

MR. KATZ:
May I state, then, for the record—

MR. HIRSCH:
I am just adding that as a further—

MR. KATZ:
May I state for the record that we will file a written application and set forth all the pertinent facts thereto in order to make out a case under Section 3 of the Act.

THE COURT:
Yes.

MR. HIRSCH:
I offer in evidence as Plaintiff's Exhibit 26 a letter agreement dated July 29, 1937, between the Apex Hosiery Company and the American Federation of Hosiery Workers, Branch 1, Lo-

cal No. 706, as it may relate to any questions that arises under this provision that has been offered by Mr. Katz,—

THE COURT:

Very well.

MR. HIRSCH:

—in connection with the agreement.

(Letter dated July 29, 1937, from American Federation of Hosiery Workers, Branch No. 1, Local No. 706, to Apex Hosiery Company was marked Exhibit P-26. A copy thereof follows:

Exhibit P-26

"July 29, 1937.

APEX HOSIERY COMPANY
5th & Luzerne Streets
Philadelphia, Pennsylvania

This is to confirm our understanding that the terms and conditions of the Agreement entered into simultaneously herewith on July 29, 1937, by and between APEX HOSIERY COMPANY and AMERICAN FEDERATION OF HOSIERY WORKERS, including Branch No. 1, Local 706, shall not be construed to waive or prejudice in any way the claim for damages of the APEX HOSIERY COMPANY now pending in the District Court for the Eastern District of Pennsylvania, as of March Term, 1937, No. 19950, or that the APEX HOSIERY COMPANY its successors or assigns may subsequently institute in the Pennsylvania State Courts, against the AMERICAN FEDERATION OF HOSIERY WORKERS, Branch No.

1, Local No. 706, its Officers and Members as such and/or individually.

Nothing herein contained shall be construed as an admission of liability on our part in the above suit or in any other suit that may be instituted by the APEX HOSIERY COMPANY, but on the contrary, we specifically deny any liability to the APEX HOSIERY COMPANY for damages alleged to have been suffered by it.

AMERICAN FEDERATION
OF HOSIERY WORKERS,
Branch No. 1, Local No. 706

By s William Leader
President

s Joseph Burge
Vice President

WITNESSES:
s Sylvan H. Hirsch
s M. Herbert Syme")

MILDRED KELLY, having been duly sworn, was examined and testified as follows:

Direct Examination

BY MR. HIRSCH:

Q. Miss Kelly, you were formerly an employee of the American Federation of Hosiery Workers, Branch 1?

A. Yes.

Q. In what capacity?

A. Well, I took care of the records there. I didn't have any official title.

Q. Were you a stenographer—

A. No.

Q. —or a typist?

A. I was a typist.

Q. And are you still employed by the union?

A. No.

Q. You were subpoenaed by me to appear here today, were you not?

A. Yes.

Q. When did you leave the union, the union's employ?

A. In October, '37.

Q. I show you a letter dated June 24, 1937, which has been marked for identification as Plaintiff's Exhibit number 24, and ask if the initials in the lower left-hand corner "mk" signify your initials.

(The witness examined the letter.)

A. Yes, they do.

BY MR. HIRSCH:

Q. Was there any other stenographer in the employ of the union at that time with the initials of mk?

A. No. I don't think so.

Q. And will you take a look at that letter and tell us whether or not you typed the letter that is before you, or if it was done in a number of copies of the same letter, whether you typed the original?

A. Well, I would have typed the original draft of the letter, I know, but I may have given it out,

there were several copies to be made up, I may have given it out to a couple of the girls.

Q. Would that be the type letter—

A. But I may have typed that all alone, I don't know.

Q. Would that be the type letter that would be made up in more than one copy, as far as you recollect?

A. Yes.

Q. And at that time, in June of 1937, were there notices prepared for shops to appear at the Apex, for other shops to appear at the Apex and picket, such as the one before you?

A. Oh, I don't know.

Q. But you prepared that one?

A. Yes. Well, it is my initials.

Q. Yes.

A. So I prepared the original.

THE COURT:

May I see it, Miss Kelly?

BY MR. HIRSCH:

Q. Now, there appears the signature of William Leader. Who signed that?

A. I did.

Q. That is your signature for him?

A. Yes.

Q. I show you a card that has been marked Plaintiff's Exhibit number 25 for identification, and ask you who prepared the signature of William Leader on that.

(The witness examined the card.)

A. I did.

BY MR. HIRSCH:

Q. You did?

A. Yes.

Q. Now, will you tell us under what circumstances that letter was prepared? Oh, first, was that letter prepared and delivered, as far as you know?

A. Yes. It wouldn't have been mailed out, it would have been given to someone in the office, I think, to take out.

Q. And will you tell us the circumstances under which that letter was prepared, as far as you can recollect?

A. Well, I don't know for certain, but these letters that were to be sent out to one shop, someone would come in and ask me to make up a—

Q. Who would come in?

A. Well, that I don't know, it might be the shop chairman or one of the shop committee.

Q. The shop chairman of the shop to which this notice was to be sent,—

A. Yes.

Q. —or a member of the shop committee in that shop to which this notice was to be sent?

A. Yes.

Q. And what would happen, he would come in—

A. He would come in.

Q. —to headquarters?

A. Yes, and ask me to make up eight copies, or twelve copies, according to the number of people in the shop. I think these notices were posted in the shop.

Q. And under what circumstances then would you sign William Leader's name?

A. Well, ordinarily Mr. Leader would have to

O. K. it, but I would say during those days if Mr. Leader didn't come into the office, if he wasn't coming in, and if a chairman would come in and ask me to type up a letter like this and sign his name, Mr. Leader wasn't there, I would ask him if it was all right with Mr. Leader.

Q. And—

A. And if he said yes, I would take his word for it.

Q. So that your signature of William Leader's name was either with his—at his direction or with his consent, or at the direction of the shop chairman of the shop to which this notice was to be sent, who would first tell you that Leader said it was all right.

A. I think that's—

Q. Now, the shop chairmen of the various shops did come into headquarters during that time, did they not?

A. Yes.

Q. And that is the official letterhead of the union?

A. Yes.

Q. And was prepared at union headquarters?

A. Yes.

Q. And they were located where?

A. 2530 North Fourth Street.

Q. And there was a regular office maintained there with a staff, was there not?

A. Yes.

Q. How many girls were on the staff?

A. I think there were five others at that time, besides myself.

MR. HIRSCH:

That is all; cross examine. I want to offer

this letter in evidence at this time. It has already been marked for identification, and I now offer it as Plaintiff's Exhibit number 24, and I also offer in evidence Plaintiff's Exhibit number 25.

BY MR. HIRSCH:

Q. By the way, in order that the record may indicate, there is a writing on here, "The above signatures were written by me, Mildred G. Kelly." You just put that on when you were shown the letter the other day, didn't you?

A. Yes.

MR. HIRSCH:

And for the purposes of the record we may consider this as if it were not in the letter.

(A copy of Exhibit P-24 follows:

Exhibit P-24

"Bell Phones: Regent 2440

Regent 2441

FULL FASHIONED HOSIERY WORKERS
UNION OF PHILADELPHIA
AND VICINITY

Branch No. 1, A. F. of H. W.
Affiliated with American Federation of Labor
as Local 706, U. T. W. of A.

Meetings Rooms and Offices,

2530 N. Fourth Street

WILLIAM LEADER
President

JOSEPH P. BURGE
1st Vice President

PHILADELPHIA, June 24, 1937.

SPECIAL NOTICE

ATTENTION:
EMPLOYEES OF THE ARTCRAFT SHOP:

You are hereby notified to picket the Apex Shop both before and after work on Tuesday, June 29, 1937.

You will continue to picket this Shop on the same day (Tuesday) of every week until further notice.

Fraternally yours,

/s/ Wm. Leader
President

/s/ Joseph Burge
Vice-President

FULL FASHIONED
HOSIERY WORKERS
Local 706 Branch One

Wl:mk
Stbau
18049
(notation in ink)

The above signatures were written by me

Mildred G. Kelly"

(A copy of Exhibit P-25 follows:

Exhibit P-25

"(THIS SIDE OF CARD IS FOR ADDRESS)

Wm. Meyer, Jr.
6th and Chelten Ave.
City

Phila. May 21, 1937

Greetings:

The Apex Strike is more than 2 weeks old. While the whole industry has been breathlessly watching you, and workers everywhere have been heartened by your splendid courage, the Apex Company has sent out 'feelers' for a settlement, and, at the same time, has been trying all kinds of schemes to break the strike.

We are calling a meeting of the Apex workers for Tuesday evening, May 25, at the Labor Lyceum, 2nd & Cambria, at 8:30 o'clock, to give you a detailed report of the entire situation.

Wm. Leader
President C I O

Tune in WIP Monday, May 24, 10:30 p. m.

Wm. Leader will talk about the strike situations.")

Cross Examination

BY MR. SYME:

Q. Miss Kelly, you were asked by Mr. Hirsch whether you signed this letter for Mr. Leader. Did you show this letter to Mr. Leader beforehand?

A. Well—I don't know that. I said that ordinarily it was the custom for Mr. Leader to O. K., I mean—

Q. Did he O. K. this particular letter?

A. Oh, no, I don't know whether he did or not.

Q. Did you put it on his desk for his O. K.?

A. No.

Q. You did not?

A. I don't think so. I wouldn't have put it on his desk to wait for him because they went out, I imagine with letters of that type, they would have gone out right away, the man would be waiting for them.

BY THE COURT:

Q. Well, I understand that what you mean is that you don't remember anything about it, but that if he was present you would have asked him,—

A. Yes.

Q. —and if he was not, you would not have?

A. No, I couldn't have.

BY MR. SYME:

Q. Miss Kelly, was it a general custom, so far as you remember, to send out letters by the union to other shops to ask them to picket the Apex shop?

A. Well, I don't think it was a general custom, but I don't know, I don't remember.

Q. I show you this letter. Is that Mr. Leader's signature?

(The witness examined the letter.)

A. Just one minute,—

(The letter was shown to Mr. Hirsch.)

BY MR. SYME:

Q. You weren't Mr. Leader's private secretary, were you?

A. No.

Q. Who was Mr. Leader's private secretary?

A. At that time it was either Miss McCourt or Miss Rau.

Q. Either Miss McCourt—

A. Yes.

Q. —or Miss Rau?

A. I don't know just when Miss Rau started in.

Q. You didn't have any personal correspondence for Mr. Leader?

A. No.

Q. You were just one of the stenographers in the office, is that right?

A. Well, I wasn't a stenographer, really.

Q. What were you, Miss Kelly?

A. Well, I was a typist and I took care of the records.

Q. You have read this letter, have you?

A. No, I didn't read it.

Q. Would you mind reading it?

THE COURT:

Is this another letter?

MR. SYME:

That is another letter.

THE COURT:

Well, I better see what it is. All right.

BY MR. SYME:

Q. Do you have any knowledge of this letter Miss Kelly?

A. No.

MR. SYME:

All right, thank you, that is all.

J. ALLEN HARPER, recalled.

Direct Examination

BY MR. HIRSCH:

Q. Were you in court, Mr. Harper, when Mr. Etter testified the other day?

A. I was.

Q. And did you hear him testify that you never showed him the damage to the door in the basement, or the broken door to the roof, or any other damage except a broken window pane in the yard?

A. I did.

Q. Now, you related in your direct examination a few days back the damage which you did find on the property. Did you ever show Etter any of that damage?

A. Oh, yes.

Q. Did you ever show him the damage to the door leading to the roof?

A. Yes indeed.

Q. How?

A. Took him up there. We were up on the roof. That door was broke off at three different times, and the last time they tore the casing and everything off.

Q. And what did you do with Etter about it?
A. Well, we just went up.
Q. Showed it to him?
A. Yes, reported it to him.
Q. What about the damage to the door in the basement? What door was that?
A. They broke the lock off of a cage door going into the electrical department. That was the night of May 6th.

THE COURT:
I thought the testimony on damages had been postponed.

MR. HIRSCH:
Well, I am only rebutting on Etter's testimony,—

THE COURT:
Oh,—

MR. HIRSCH:
—as to what was shown—

THE COURT:
—it isn't worth while. It isn't worth spending time on. The question of damages has been referred.

MR. HIRSCH:
All right.

BY MR. HIRSCH:
Q. Now, then, what happened that particular day when you were in the basement with regard to the damage to the door to the cage? Who else was with you?

A. Two police, the sergeant and the acting captain.

Q. And who else?

A. Well, there was about eight of our own fellows.

Q. Was Etter there?

A. Yes, William Etter was there.

Q. Now, what happened on that particular day?

A. Well,—

Q. Of an unusual nature.

A. I had the police down there with Etter to show them that the tools—these drawers were broken open and the tools were taken out of them. Etter took ahold of the drawer there—first, he claimed there was no drawers broken open there, and then finally he took ahold of the drawer, the handle of the drawer, with a handkerchief, and pulled the drawer open, and the officer looked at him and he says, "You are pretty smart, aren't you?"

Q. What did Etter say?

A. Well, Etter didn't reply to anything, but they showed him that all the drawers were broken open, because we opened every drawer to show it to him. He just took ahold of them and pulled them out.

MR. HIRSCH:

I have another line of examination. May I see Your Honor at side bar,—

THE COURT:

Very well.

MR. HIRSCH:

—so I may have a ruling on it before I go into it?

(Discussion at side bar.)

MR. HIRSCH:

That is all, Mr. Harper.

WILLIAM MEYER, recalled.

Direct Examination

BY MR. HIRSCH:

Q. Mr. Meyer, were you present in court when Mr. Leader took the stand the other day and testified?

A. Yes, sir.

Q. He testified to the effect that after he came on your property you invited him into your office to discuss an agreement. Did you or did you not invite him into your office to discuss an agreement?

A. No, I did not.

Q. Did you invite him into your office at all?

A. Only when I made that remark to have somebody come in and stop the—the terrible condition, and Mr. Leader then came in through the office way.

Q. And he testified that when he came in you extended your hand and gave him a hearty greeting. Is that or is that not a fact?

A. Not to my knowledge.

Q. And he testified, Mr. Meyer, that you requested him to have the union supply cots, blankets and food for these sit-downers because you didn't want them sleeping on the tables. Did you or did you not make that request?

A. Of course not.

Q. Did you request Mr. Leader to get up on a table and make a speech?

A. No.

Q. Mr. Etter testified that when he met you that day he said, "This is the first opportunity I have had to meet you." What in fact did he say to you that day when he met you?

A. He tried to impress me that he was shop chairman around there, I think he remarked that several times, in fact, he—I noticed that he crowded himself in front of me several times. He said, "I am in charge here, I am the shop chairman." That is about the extent of his conversation.

Q. Now, will you tell us something about the physical layout of the factory? Are there any other factories next, immediately adjacent, to your factory as far as the party-wall is concerned which would permit any person to get on to your roof from another building not owned by your company?

MR. SYME:

I object to anything with respect to any building being adjacent to us. I don't see the relevancy of it, Your Honor.

THE COURT:

I overrule the objection.

THE WITNESS:

Shall I answer?

MR. HIRSCH:

Yes.

A. No, there is no factories there at all.

BY MR. HIRSCH:

Q. Your building is bounded on three streets, is it not?

A. That is right.

Q. And on the fourth side what bounds it?

A. There is a hardware store.

Q. And what is the height of the—

A. And there is an alleyway between that, and the height of that store, I think, is three stories high.

Q. And how high is your factory at that point?

A. Six stories.

Q. So that there is no building next to your factory on any side which would permit anyone to come from that building over to the roof of your building?

A. No, they couldn't do it.

MR. HIRSCH:

That is all.

Cross Examination

BY MR. SYME:

Q. Mr. Meyer, there was a rain on May 6th, as far as you remember?

A. Why, I would say this, when I came in from —which was about around quarter after two—

Q. No, I don't mean at that time.

A. Well, it was threatening.

Q. I mean around four-thirty.

A. It was threatening, but whether it was raining—

BY THE COURT:

Q. No, around four-thirty did it rain? Do you remember that?

A. I don't remember that.

BY MR. SYME:

Q. What time did you leave the plant, Mr. Meyer?

A. I left the plant about six o'clock. I wouldn't recall whether it rained or not.

Q. Did you ask Mr. Leader to address the crowd?

A. I asked Mr. Leader to quiet the crowd.

Q. You did ask him to do that?

A. I did that.

MR. SYME:

That is all.

Redirect Examination

BY MR. HIRSCH:

Q. And why did you ask him to quiet the crowd?

A. Because his was the voice that I heard immediately outside which ordered a strike and a sit-down, and then when they said, "Get Mr. Leader", when I called for what you might say help to stop this situation, then when Mr. Leader came I asked him, "For goodness sake, please quiet the thing down", and from the moment that Mr. Leader stepped into the factory things quieted down immediately, and people started to clean up the wreckage, to make room, so they could get through it.

Q. Did anyone else other than Mr. Leader appear to be in charge of that group?

A. Outside of Mr. Etter kept telling me that he—he had been elected shop chairman. He kept saying that right along. I don't know whether he wanted to take the honors away from Mr. Leader, or vice versa, I don't know.

MR. HIRSCH:

That is all thank you.

(The following occurred out of the hearing of the jury:

MR. HIRSCH:

Let me make the offer. With the agreement of counsel for the defendants the record may note the fact that the membership cards and records of the union as examined by Mr. Mulcahy, the representative of David Bachman, the Special Master appointed by this Court, indicated the following eight persons who were the only employees of the Apex Hosiery Mill who prior to May 6th, 1937 were duly noted on the books and records of the union as being members of the union:

Clifford H. Ferber, Betty Adams (now Werger), L. Geoghegan, J. Gladen, E. Morris, Charles Lehall, Ella Schultz (now Schubert), Peter Wolfert.)

MR. HIRSCH:

Plaintiff rests at this time on the question of liability.

THE COURT:

Well, now, gentlemen, do I understand that both sides have now produced all the evidence which they have relating to the issue of liability, and, in fact, all the evidence on every point except the measure and extent of the damages, and that both sides rest their case—

MR. SYME:
Your Honor,—

THE COURT:
—to that extent?

MR. SYME:
—I don't want to interrupt you, I would like to put on just one witness, a girl in the office, with respect to a letter. It will take me just a minute.

THE COURT:
All right.

MR. SYME:
Miss McCourt—or, Miss Rau, rather.

MR. HIRSCH:
May I see Your Honor at side bar with Mr. Syme?

(Discussion at side bar.)

Defendants' Evidence Surrebuttal

ELSIE RAU, having been duly sworn, was examined and testified as follows:

Direct Examination

BY MR. SYME:

Q. Miss Rau, are you Mr. Leader's private secretary?

A. I am.

Q. And on June 28th were you Mr. Leader's private secretary?

A. Yes, I was.

Q. What do your duties as his private secretary consist of, very briefly?

A. Take all letters dictated by him, and all committees, under his direction.

Q. Miss Rau, I show you this letter of June 24th. It has been marked as one of the plaintiff's exhibits. Do you remember that letter?

(Exhibit P-24 was shown to the witness.)

BY MR. SYME:

Q. Do you remember that letter?

A. No, I don't.

Q. Miss Rau, I show you this letter. At the bottom of the page you see the initials "er". Are they your initials?

(A letter was shown to the witness.)

A. Yes, they are.

BY MR. SYME:

Q. And you remember taking this letter?

A. Yes, I do.

Q. Did Mr. Leader dictate this letter to you personally?

A. Yes, he did.

Q. Do you remember the circumstances surrounding this letter? Why did Mr. Leader give you this letter?

A. The letter was sent out previously to this and it was called to my attention later that it should not have been sent out, and that Mr. Leader had not dictated it and didn't authorize any such

letter to go out. He became very angry about it, and dictated this correction letter to me.

Q. And you—

A. He insisted that his personal signature go on it.

Q. And is that Mr. Leader's personal signature?

A. Yes, that is.

Q. You know Mr. Leader's personal signature?

A. Yes.

MR. SYME:

All right. Mark this for identification. Cross-examine.

(Letter dated June 28, 1937, from William Leader, President, "Attention All Shop Chairman" was marked for identification Exhibit D-9.)

MR. HIRSCH:

May I see that, please?

BY MR. SYME:

Q. I just want to ask one question. Miss Rau, the date on the top of this is June 28th, and here you have July 24th. Look at that.

A. I believe that should be June 24th.

Q. June 24th.

MR. SYME:

Will you object to this being offered in evidence?

(The letter was shown to Mr. Hirsch.)

BY MR. SYME:

Q. Will you read this letter? Read it out loud.

MR. HIRSCH:

That is objected to.

THE COURT:

Well, it goes directly to the letter you offered. It is all right.

MR. SYME:

That is right.

THE COURT:

I will overrule the objection.

BY MR. SYME:

Q. Will you read the letter out loud, Miss Rau.

A. "Greetings:". This is to all shop chairmen.

"Through a misunderstanding in our office, a special notice was sent out dated July 24, 1937 as follows:

'TO ALL EMPLOYEES OF THE SHOP:

"You are hereby notified that you are to picket the Apex Hosiery Company both before and after work on

"You will continue to picket this shop on the same day ( ) of every week until further notice.'

Fraternally yours,"

Signed, William Leader and Joseph Burge.

"We wish to inform our members that at no time does the Union order you to picket the Apex Hosiery Company or any other plant. All picketing by our membership is done voluntarily and a question of picketing by shops is always discussed at the shop meetings."

"In all strikes members have the legal right to peacefully picket and we know that they will continue to exercise that right unless forbidden to do so by law. Strikes, as we all know, are won by peaceful picketing.

"Again let me emphasis, at no time does the Union order anyone to picket anywhere." —that is underlined.

Signed, Fraternally yours, William Leader, President, Full Fashioned Hosiery Workers; Joseph Burge, Vice-President.

Q. I show you a list of shops that was attached to this letter. Are they the shops to which this letter was sent?

A. Yes, it was.

MR. SYME:

I offer the letter and the attached list in evidence, Your Honor, as a defendants' exhibit.

MR. HIRSCH:

Objected to for the purpose of the record.

THE COURT:

Overruled.

(Letter dated June 28, 1937, from William Leader, President, "Attention All Shop Chairman," and attached list, was marked Exhibit D 9. A copy thereof follows:

Exhibit D-9

"Bell Phones: Regent 2440

Regent 2441

FULL FASHIONED HOSIERY WORKERS UNION OF PHILADELPHIA AND VICINITY

Branch No. 1, A. F. of H. W. June 28, 1937

Affiliated with American Federation of Labor as Local 706, U. T. W. of A.

Meeting Rooms and Offices,
2530 N. Fourth Street

WILLIAM LEADER, President — JOSEPH P. BURGE, 1st Vice President

SPECIAL NOTICE

PHILADELPHIA, June 28, 1937

Greetings:

ATTENTION ALL SHOP CHAIRMAN

Through a misunderstanding in our office, a special notice was sent out dated July 24, 1937 as follows:

'TO ALL EMPLOYEES OF THE ——SHOP:

You are hereby notified that you are to picket the Apex Hosiery Company both before and after work on————————.

You will continue to picket this shop on the

same day ( ) of every week until further notice.'

Fraternally yours,

(Signed) Wm. Leader,
President,

(Signed) Joseph Burge,
Vice-President.

We wish to inform our members that at no time does the Union order you to picket the Apex Hosiery Company or any other plant. All picketing by our membership is done voluntarily and a question of picketing by shops is always discussed at the shop meetings.

In all strikes members have the legal right to peacefully picket and we know that they will continue to exercise that right unless forbidden to do so by law. Strikes, as we all know, are won by peaceful picketing.

Again let me emphasize, *at no time does the Union order anyone to picket anywhere.*

Fraternally yours,

Wm. Leader,
President,
Full Fashioned Hosiery
Workers.

Joseph Burge,
Vice-President.

WL/er

THE ATTACHED NOTICE WAS SENT TO THE FOLLOWING:

SHOP CHAIRMAN—BRANCH ONE

NAME ADDRESS SHOP

Fred Boggs, 3934 N. Franklin St., Lucille
Steven Boyd, 1855 E. Clementine St., Richardson
George Brown, 6710 Lynford St., Marnet
Max Burger, 3411 Tudor St., H. C. Aberle
T. C. Carey, 415 Knorr St., Fashionmaid
Charles Carlson, 888 Granite St., Keystone
Michael Casey, 2939 "D" St., Hancock
Douglas Clark, 3457 Helen St., Torresdale
Stanley Clemm, 334 N. Hancock St., Venus
Sam Collingsgrue, 4436 N. Reese St., Collins
Frank Crinlies, 3474 Weikle St., Roxboro
Leo DeMartin, 6739 N. Carlisle, Roxboro
Jules Eberhardt, 3177 Cedar St., Deal
Harry Ernst, 6319 Marsden St., Bailey
Erwin Fahl, 4911 N. Broad St., Rialto
Phil Fanning, 2316 Emerald St., Brownhill & Kramer
Joseph Felix, 4226 Romain St., Quality
John Fisher, 3224 Magee St., Dragon
John Gendick, 4820 Garden St., VanKirk
Marge Given, 3030 N. Swanson St., Roslyn
Jean Goldi, 7781 Jackson St., Ruby Ring
Rudolph Hackbart, 3415 "E" St., Martha
Samuel Heisman, 1910 Clarence St., Schneider
Gertrude Hilsee, 3331 Jasper St., Barsol
George Holt, 1706 Brill St., Concordia
Adam Horger, 4946 N. Smedley St., B & B
John Hughes, 802 Willard St., Venango
Monroe Hutzel, 3357 Argyle St., Courtland

NAME	ADDRESS	SHOP

Margaret Jones, 2538 N. 3rd St., Lee ret.
(Above name crossed out.)
James Keenehene, 3434 Emerald St., Schuster
Marvin Kelly, 7222 Marsden St., Whitehall
Hugh Kerr, 3010 N. Marshall St., Vogue
William Kirsch, 4624 Rising Sun Ave., Berger
Joseph Kline, 2235 E. Ann St., Gotham
Ernest Kornfeld, 1013 W. Cambria St., Superior
John Kuhns, 1000 Winchester, Rockledge, Robinson
Louis Lanard, 7160 Glenlock St., Rogers
Vic LaVelle, 5720 Hegerman St., Realart
Wm. MacGruther, 1419 Clearfield St., Nickels & Lauber
Jerry Malloy, 3253 N. 16th St., Gold Seal
Florence McCarthy, 2815 N. Bouldinot St., Clover
Daniel McEwen, 6145 N. Lawrence St., Quaker
Bernard McLaughlin, 444 E. Westmoreland St., Colonial
Terence McManus, 5510 Miriam Rd., Co-Ed
Alfred Meyers, 2513 Mascher St., Roxboro
John Mirsch, 4117 N. 6th St., McCaulley
Walter Moore, 631 E. Levick St., Daintyfoot
William Morrow, 7717 Ferndale St., International
Jack Muller, 2736 N. 11th St., Quaker
Frank Nagle, 156 W. Tioga St., Crystal
Sophie Nagle, 156 W. Tioga St., Gotham
Joseph O'Neill, 4551 Cottman St., Courtland
Charles Palmer, 3038 N. Warnock St., Gold Seal

NAME ADDRESS SHOP

Walter Pike, 1532 Dyre St., Grey Dot
Harold Pratt, 3466 N. Hurley St., Tabor
Frank Reed, 4003 N. Fairhill St., Klearspun
Edw. Richards, 3449 N. Mascher St., Federal
David Ritchie, 3149 Weymouth St., Sylvania
Jules Ryazeleski, 2250 E. Monmouth St., Alex
Charles Schuster, 264 Carl Mackley Apts., La Salle
Paul Simmer, 5065 Pennway Ave., Arlington
John Skbjack, 130 Krams Ave., Cambria
Frank Smith, 1504 Womrath St., Opal
Lillian Sweeney, 1825 E. Lippincott St., D & M
John Thompson, 5945 N. Belden St., Vogue
Wm. Turner, 3230 N. Kipp St., Nickels & Lamber
Robert Vemango, 4909 Friendship St., Ruby Ring
Harry Verdier, 303 E. Thayer, Endurance
Joseph Whitaker, 3740 Frankford Ave., Triple-wear
Frank Wisniewski, 3506 Englewood St., Jolly
George Wolf, 2736 W. Sterner St., O. K. Shop
Wm. Zielke, 5400 N. Fairhill St., Rockledge
Elmer Zschunke, 7342 Torresdale Ave., Minisac
Harry Seneider, 2351 Coloroda St., Christos
William Koenig, 4551 "D" Street, Lee Robinson
Thomas O'Neil, 4051 Aldine St., VanKirk")

MR. SYME:

That is all, sir.

MR. HIRSCH:

Now, wait. I am not through.

Cross Examination

BY MR. HIRSCH:

Q. Miss Rau, this letter is dated June 28, 1937?

A. Yes.

Q. An injunction was handed down by this Court dated June 22nd, 1937, prohibiting picketing up at the Apex plant in any large numbers, such as would intimidate, coerce or otherwise force membership, was it not?

MR. SYME:

Your Honor, I object to it. First of all, Mr. Hirsch—

THE COURT:

Well, I will sustain the objection. The only thing this young lady has testified to is that this letter was sent out, that is all. She hasn't said anything about the import, or any inferences to be drawn from it. That is not cross-examination.

BY MR. HIRSCH:

Q. Why is it this letter is dated on the typewriter and not on the stencil that was cut?

A. That is because I forgot to put the date in the type on the stencil, and then for our file I put it in so I wouldn't have any trouble later on. It was done at the same time.

Q. You forgot to put the date of this letter on the stencil, and the date which you put in the stencil of July 24, 1937 you say was wrong?

A. That was an error.

Q. Isn't it possible that the date of July 24,

1937 is correct, and the date that you put on there in typing is in error?

A. I doubt it, because I always date my letters as soon as I file them.

Q. Do you have your shorthand minutes with you in court?

A. No, I don't.

Q. Do you retain them for any length of time?

A. I usually do, certain ones.

Q. Do you ever sign William Leader's name for him on any letters?

A. When he is too busy to sign himself and he authorizes me to sign it.

MR. HIRSCH:

That is all.

THE COURT:

Now, is that all, gentlemen?

MR. SYME:

That is all, yes, sir.

THE COURT:

Well, now, then, the Court understands that both sides have rested their case upon the issue of liability and upon all issues except the matter of damages, and that no further evidence will be offered by either party unless the Court determines that it bears upon the issue of damages, which has been referred to the Master. That is correct? Except with this one exception, that if the Court determines that the Act of 1925 is applicable, then whatever testimony necessary to support the plaintiff's motion to dismiss or to suspend may be offered and taken.

MR. SYME:

Defendants' motion, Your Honor.

MR. HIRSCH:

To support defendants' motion.

THE COURT:

Defendants', yes.

MR. HIRSCH:

You said plaintiff's; and to support the plaintiff's position contrary to the motion.

THE COURT:

Oh, yes, on that issue, I mean, and then only if the Court determines that Act can be applicable under the circumstances.

Well, now, I am going to ask the jury to come back tomorrow morning, as it may be advisable to give them further instructions at that time. Counsel can meet me in chambers to work out the procedure from now on, and we will adjourn, then, until tomorrow morning at ten o'clock. There may be nothing further for you at that time, or there may be some matters to be submitted to you then. We haven't quite worked that out. But you be here at ten o'clock tomorrow morning.

Adjourned until Tuesday, March 21, 1939, at ten o'clock A. M.

Philadelphia, Pa., March 21, 1939

Seventh Day

THE COURT:

Now, in Apex Hosiery the Court enters the following order:

> NOW, March 20, 1939, David Bachman, Esq., is appointed master under Rule 53 to make and report findings upon the issue of damages sustained by the plaintiff as a result of injury to and destruction of its physical property, plant, machinery, equipment and merchandise, occurring from May 6 to June 23, 1937, inclusive. The Master is instructed to report separately the damages resulting from injury to property occurring on May 6, 1937.
>
> The Master will sit to hear testimony beginning Wednesday, March 22, 1939, and will sit continuously until the testimony is complete, Saturdays and Sundays excluded.

Now, is there any further action necessary, gentlemen?

MR. SYME:

Your Honor, for the purposes of the record I want to make it clear that we do not consent to the reference to the Master, and that we object to it.

MR. HIRSCH:

I think for the purposes of the record it should be made clear that the defendants were the ones who not only approved Your Honor's statement that you would make this order, but

heartily concurred in it, although they did say they could not for purposes of the record agree to it.

THE COURT:
Well, gentlemen,—

MR. SYME:
Your Honor,—

MR. HIRSCH:
Let me finish, please, Mr. Syme.

MR. SYME:
—I am going to ask for the withdrawal of a juror if Mr. Hirsch continues prejudicing the jury with these speeches.

THE COURT:
No, the jury won't pay any attention at all to what counsel are saying now. It is a matter not in your province. It is purely a legal question.

MR. HIRSCH:
And I want it noted that at the time when the discussion of reference to a Master was held I asked that the matter continue before the jury, if you will recall, Judge Kirkpatrick.

THE COURT:
Well, gentlemen,—

MR. HIRSCH:
Now that your order is made I do not file an objection to it,—

THE COURT:
—it is understood—

MR. HIRSCH:

I will acquiesce in it.

THE COURT:

Gentlemen, it is understood that the order is made by the Court of its own motion, without consent of either counsel. It is made in the interest of saving time and expeditiously concluding the testimony in the case. The Court felt that it is very desirable to make use of whatever machinery the law gives us to shorten or to limit the amount of testimony which the jury would have to listen to on this complicated question of physical damage.

It is understood that the order does not include damages alleged to have arisen from loss of profits and during the period when the mill was not operating. That will be heard before the jury when hearings are resumed.

Now, gentlemen, what arrangement shall we make about having the jury come back? Is it agreeable to have the jury notified when the hearings are concluded, or do you want to have a day set and bring them back with the possibility that they may just simply have to be sent away again if the hearings before the Master are not concluded?

MR. HIRSCH:

Subject to your call will be satisfactory to us.

THE COURT:

Is that all right?

MR. SYME:

That is perfectly all right.

THE COURT:

All right, both sides agree that the jury may be allowed to remain subject to the call of the Court.

Now, members of the jury, you see, we have really no idea how long this accounting before the Master is going to take. It may be a matter of only a few days and it may be very much longer than that. I think as a matter of your convenience the best thing to do will be just to leave you subject to call. Both sides have agreed to that method, but I also think it would be a good idea if you would stop before you leave at the Clerk's office, go down there this morning as soon as I let you go, go down to the Clerk's office and give them your telephone number, because that may save some time.

All right, well, the Clerk will be over here in a few minutes. He will take you down to the office and then you can give him that information. Then if you make any change of address before you are called be sure to notify the Clerk. That applies to the alternate jurors as well as the jurors in the box. Now, suppose you just wait here until the Clerk leaves, and you will, of course, remember the caution that I have given you a number of times during the trial of this case, about not discussing the case with any person or permitting any discussion with you about it.

I think that is all, then.

Let me speak to counsel before we adjourn. You may take the jury.

Adjourned

Philadelphia, Pa., March 29, 1939

Eighth Day

THE COURT:

Are we ready to proceed?

MR. HIRSCH:

Yes.

Plaintiff's Evidence (Continued)

MR. HIRSCH:

What does Your Honor care to do on the Master's report, now that it has been filed?

THE COURT:

Well, you offer it in evidence and it can be read to the jury at any time.

MR. HIRSCH:

I will offer it in evidence at this time. May I have it, sir? It has been filed with you.

THE COURT:

Yes. I will read it to the jury.

Members of the jury, counsel for the plaintiff has just offered in evidence the report of

the Special Master. You will understand the Special Master was a gentleman appointed by the Court, having no connection with either side in this case, who happened to be one of the referees in bankruptcy, and to whom a number of matters of this kind are referred, and this is his report on the amount of damages in money sustained by the plaintiff. It refers only to the physical damage to the plant and machinery. The other items of damage that the plaintiff claims will be gone into here, but these items of physical damages, were so numerous and complicated that we decided, or I decided, that this was the best way to do it.

He has divided it into two categories here, the purpose of which will appear. First, he has reported the damages which occurred on May 6th, 1937—and you will remember that was the day that the plant was broken into—and, secondly, he has reported the damages from May 7th up to June 23rd, inclusive, which was the day on which the sit-down strike ended, and he has reported them item by item. There aren't a great many, there are only two pages, so that I will read them to you.

The damgaes which he reports occurred on May 6th are as follows—that is, in money value; I am not reporting separate items here. This represents actual money damage to the plaintiff:

Glazing	$	803.73
Plumbing		359.10
Hardware repairs and supplies		659.01

Electrical repairs and supplies	$ 708.73
Painting	98.06
Doors	130.00
Repairs and replacement of fixtures	4,319.54
Replacement of broken tubes for vapor lights	730.35
Repair and replacing of stencilling machine and parcel post scale	135.00
Repairs to multigraph equipment	106.71
Repairs to label pasting machines	135.00
Repair and replacement of sealing machine	90.00
Miscellaneous repair and replacement of mill furniture and equipment	1,106.24
Repair to time recording system	895.00
Repairs to desks, typewriters, adding machines, etc.	1,242.07
Repairs to and replacement of venetian blinds in office and plant	751.00
Repairs to and miscellaneous replacement of office equipment	30.00
Miscellaneous repairs in office and plant	161.83
Additional miscellaneous damage	125.00
Damage to machinery other than knitting machines	400.00
Miscellaneous labor repairing damage	300.00
Inventory shortage, damaged hosiery, labor costs for sorting ware room merchandise, silk and yarn waste on damaged machines, stolen mill supplies and miscellaneous supplies	4,750.30

Reprocessing of soiled hosiery	$ 2,528.45
Cost of labor for repairing damage to plant and equipment	5,925.00
making a total of damage which the Master reports as having occurred on May 6th of	$ 26,490.12

Now, the damage from May 7th to June 23rd, inclusive, consists of:

Doors	$ 60.00
Knitting machinery—bill of Textile Machine Company	67,818.16
Corrosion and damage to machinery repairs made by Apex	11,605.09
Repairs to time recording system	699.75
Damage to machinery other than knitting machines	740.44
Repairs to fence	37.50
Inventory shortage, damaged hosiery, labor costs for sorting wareroom merchandise, silk and yarn waste on damaged machines, stolen mill supplies and miscellaneous supplies	527.00
Repairs to roof	47.60
Damaged silk	175.00
Cost of labor for repairing damage to plant and equipment	934.05
making a total damage occurring from May 7th to June 23rd, inclusive, of	$ 82,644.59

The entire total of damage from May 6th to June 23rd, inclusive, of the physical damage, is $109,134.71.

MR. HIRSCH:

Does that report now go in evidence as an exhibit, sir?

THE COURT:

Oh, yes, it might as well.

MR. HIRSCH:

May I have it marked, then?

THE COURT:

Yes.

MR. SIMONS:

If Your Honor please, may I enter my objection? May I enter my objection to that being offered in evidence? We objected to the original appointment.

THE COURT:

Yes, all right.

MR. SIMONS:

I enter my objection at this time to having read that matter in evidence.

THE COURT:

Yes; I will overrule that.

MR. SIMONS:

There are a large number of items here, and I don't want to enter objections that we may have had to a number of them, but I do want to direct the Court's attention particularly to an objection on the matter of the knitting machines and repairs to the knitting machines amounting approximately to an item of the Textile Machine Company of $67,818., and

also of repairs by the Apex Company of $11,-605.

THE COURT:

Yes.

MR. SIMONS:

I objected at the time that the offer was made, and also at the time that the Master made his findings, which matters were of course, not of record. The Master granted the entire claim, granted the amount as claimed. He did not take into consideration at all at the time of this claim the fact that there was a certain amount of obsolescence and depreciation of the machinery. In other words, the testimony as presented indicated that there had been an order for some fifty-one machines—

MR. HIRSCH:

Now, I am going to object to Mr. Simons making this speech at this time, for the reason that the testimony will clearly show to the contrary that was produced to the Master.

MR. SIMONS:

Well, now,—

MR. HIRSCH:

Let me finish. When Mr. Simons made his similar objection to the Master the Master overruled him and gave his reasons. Now, if Mr. Simons has an objection to make he ought to make it at side bar,—

MR. SIMONS:

Well, certainly.

MR. HIRSCH:

—otherwise, we will be forced to call the Master in to refute what Mr. Simons says.

MR. SIMONS:

If Your Honor please, I resent this last remark.

THE COURT:

All right.

MR. SIMONS

What I have said here was said before the Master, and the Master did not rule on it.

MR. HIRSCH:

He did rule on it.

THE COURT:

Mr. Simons and gentlemen, Mr. Simons is willing to make his offer at side bar.

MR. SIMONS:

Certainly.

THE COURT:

He might as well do it.

(The following occurred at side bar:

MR. SIMONS:

The Master did not take into consideration the question of obsolescence of these machines. The testimony by Mr. Struve was that in October of 1936 he had ordered fifty-one machines to replace fifty-one machines that he had on the premises at that time because they were of new style and new design and larger machines than what they had at the present time, and their delivery was to have

been made as soon as they could. Now, he gave no consideration to that fact. He also gave no consideration to the fact that the repairs that were done—

THE COURT:

What?

MR. SIMONS:

He gave no consideration to the fact that the repairs to the machines had lengthened the life of the machines. There was considerable testimony to the effect that they had to be re-needled and re-sinkered every so often, and by doing that it would lengthen the life of the machines, and he just considered the entire sum without giving any consideration to that at all.

MR. HIRSCH:

Are you through?

MR. SIMONS:

Yes.

MR. HIRSCH:

Now, then, Mr. Simons's statement is absolutely incorrect, for this reason. When Mr. Simons made similar objection as to obsolescence the Master said he need not take that into consideration for the reason that there was direct and uncontradicted testimony by our witnesses, and not contradicted by any witness called by the defendants, that the market value of the machine as of the time it was injured was in excess of the amount of damages in each case, and, therefore, the

amount of damage would be the measure of damage recoverable.

Furthermore, on the question of improving the machine by the repairs, the Master said that there was uncontradicted and direct testimony by us that the machine was in no way improved by the repair, but on the contrary, our testimony was that after the machine is damaged unless it is completely overhauled the machine is not as good as it was before, in any event, it is no better, so he did take that into consideration.

THE COURT:

Well, the Court is of the opinion that the objection is not a valid one, and it is overruled.

MR. SIMONS:

May I say this? The purpose of the objection is this, that if we so desire we may want to have the right to produce some testimony in rebuttal of this.

THE COURT:

Oh, you undoubtedly have the right to produce any testimony you want along those lines.

MR. SIMONS:

That is it.

THE COURT:

The rules of civil procedure specifically state that the Master shall not be directed to report the testimony taken before him, and, therefore, it obviously contemplates that the Court cannot rule upon what amounts to objections to testimony before the Master.

MR. SIMONS:
That is it.

THE COURT:
But, of course, either side can produce testimony that they wish.)

THE COURT:
Under the Rules of Procedure I instruct you that you may consider the Master's report as evidence of the amount of damages sustained by the plaintiff in this case. All right.

MR. HIRSCH:
Mr. Constantine.

MR. SIMONS:
If Your Honor please, in line with our objections we have entered, we enter an objection to the consideration of that matter in accordance with the rules.

THE COURT:
Yes, surely.

(Report of the Master dated March 28, 1938 was marked Exhibit P-27. A copy thereof follows:

Exhibit P-27

"IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

APEX HOSIERY COMPANY, a Pennsylvania Corporation

vs.

WILLIAM LEADER, et al

No. 19950 March Term, 1937

REPORT OF THE MASTER

NOW, March 28, 1939, the undersigned Master appointed 'under Rule 53 to make and report findings upon the issue of damages sustained by the plaintiff as a result of injury to and destruction of its physical property, plant, machinery, equipment and merchandise, occurring from May 5th to June 23d, 1937 inclusive', finds the following damages sustained by the plaintiff:—

AS OF MAY 6TH, 1937

Glazing	$ 803.73
Plumbing	359.10
Hardware repairs and supplies	659.01
Electrical repairs and supplies	708.73
Painting	98.06
Doors	130.00
Repairs and replacement of fixtures	4,319.54
Replacement of broken tubes for vapor lights	730.35
Repair and replacing of stencilling machine and parcel post scale	135.00

Repairs to multigraph equipment	$ 106.71
Repairs to label pasting machines	135.00
Repair and replacement of sealing machine	90.00
Miscellaneous repair and replacement of mill furniture and equipment	1,106.24
Repair to time recording system	895.00
Repairs to desks, typewriters, adding machines, etc.	1,242.07
Repairs to and replacement of venetian blinds in office and plant	751.00
Repairs to and miscellaneous replacement of office equipment	30.00
Miscellaneous repairs in office and plant	161.83
Additional miscellaneous damage	125.00
Damage to machinery other than knitting machines	400.00
Miscellaneous labor, repairing damage	300.00
Inventory shortage, damaged hosiery, labor costs for sorting ware-room merchandise, silk and yarn waste on damaged machines, stolen mill supplies and miscellaneous supplies	4,750.30
Reprocessing of soiled hosiery	2,528.45
Cost of labor for repairing damage to plant and equipment	5,925.00
	$ 26,490.12

AS OF AFTER MAY 6TH, 1937 AND UP TO JUNE 23RD, 1937 INCLUSIVE

Doors	60.00
Knitting machinery—bill of Textile Machine Company	67,818.16
Corrosion and damage to machinery—repairs made by Apex	14,605.09
Repairs to time recording system	699.75
Damage to machinery other than knitting machines	740.44
Repairs to fence	37.50
Inventory shortage, damaged hosiery, labor costs for sorting ware room merchandise, silk and yarn waste on damaged machines, stolen mill supplies and miscellaneous supplies	527.00
Repairs to roof	47.60
Damaged silk	175.00
Cost of labor for repairing damage to plant and equipment	934.05
	$ 82,644.59

TOTAL DAMAGES

As of May 6th, 1937	26,490.12
As of after May 6th, 1937 and up to June 23rd, 1937 inclusive	82,644.59
	$109,134.71

/s/ David Bachman
Master")

EARL CONSTANTINE, having been duly sworn, was examined and testified as follows:

Direct Examination

MR. HIRSCH:

I am calling Mr. Constantine earlier than would otherwise be the case, he had to come from Washington and wants to get back on the early train, if I may.

BY MR. HIRSCH:

Q. Mr. Constantine, in what industry are you presently engaged and in what capacity?

A. I am president of the National Association of Hosiery Manufacturers.

Q. And how long have you been president of the National Association of Hosiery Manufacturers?

A. Under that title for a year.

Q. One year, and prior thereto what did you do?

A. I was the managing director.

Q. And will you tell us what the National Association of Hosiery Manufacturers is, and who comprise its membership?

A. Why, it is a trade association consisting of about three hundred and fifty plants that compose the membership. The membership represents approximately eighty-five per cent of the total full fashioned capacity and production of the industry, and about seventy-three per cent of the seamless.

MR. KATZ:

Now, if Your Honor please, I object to this witness testifying unless we have an offer of proof as to just what the issue is.

THE COURT:

Yes, that is proper.

MR. KATZ:

In order to clarify it.

MR. HIRSCH:

I offer to prove—

MR. KATZ:

I would like to have it at side bar, Mr. Hirsch.

MR. HIRSCH:

All right.

(The following occurred at side bar:

MR. HIRSCH:

I offer to prove by this witness that he is an expert as to knowledge of the hosiery industry in the year 1937, and prove through him the condition of the industry throughout the year 1937, the total number of sales that were made throughout the year 1937 as compared with other periods, to indicate through his testimony that the business in 1937 was better in volume than it was in any preceding year, and thereby prove through him the condition of the industry as it would affect the Apex Hosiery Company when it was shut down, showing and laying the groundwork and the basis for our proof of loss of profits, namely, that while we were shut down we were shut down during the period while business was at its height.

MR. KATZ:

I object to that as immaterial and irrelevant to the issues.

THE COURT:

I think it would be rebuttal testimony. It seems to me the proper way to prove these profits is to show the experience of your plant.

MR. KATZ:

That is right.

THE COURT:

You see, you may have been, for all I know, an exceptional plant, one way or the other.

MR. KATZ:

That is right.

THE COURT:

Many plants go counter to the general trend in the industry. It may all be relevant evidence if there is evidence produced to show that the depression period called the sit-down strike, or something of that sort, as bearing on the probabilities of profits in the future, but I think you make your prima facie case by showing your past experience.

MR. HIRSCH:

Well, I said I was calling him out of turn because—

THE COURT:

Well, it isn't only out of turn, but you are calling him out of order. It is rebuttal testimony. Now, I will have to sustain an objection if it is made.

MR. KATZ:

Objection is made.

MR. HIRSCH:

Well, then, I will withhold it.

THE COURT:

Yes, he will just have to wait, I guess.

MR. HIRSCH:

Yes, it may be—

THE COURT:

It may be that you won't need him.

MR. HIRSCH:

No, that may be, and it may be I would have to put him on tomorrow, I don't know. He has to get back to Washington on matters involving this union and the hosiery industry.

(Discussion off the record.)

THE COURT:

I don't think we can consult his convenience and hold the case open.

MR. HIRSCH:

All right.

THE COURT:

If he isn't here when he is wanted we will have to go on.

MR. HIRSCH:

I will renew my request to put him on in rebuttal and succeeding Mr. Meyer if—

THE COURT:

Well, we will see how it works out.

MR. HIRSCH:

All right.

THE COURT:

At the present time I will sustain the objection.)

MR. HIRSCH:

Mr. Constantine, will you wait in the court, please? Mr. Langer.

JOSEPH C. LANGER, having been duly sworn, was examined and testified as follows:

Direct Examination

BY MR. HIRSCH:

Q. Mr. Langer, you are a member of what profession?

A. Public accounting.

Q. You are a certified public accountant?

A. I am.

Q. And for how many years have you followed your profession as a certified public accountant?

A. 1919.

Q. And you are a member of what public accounting institutions?

A. Pennsylvania Institute of Certified Public Accountants, and American Institute.

Q. And you are connected with what firm?

A. Mathieson, Aitken and Company.

Q. And your firm is the accounting firm for the Apex Hosiery Company?

A. They are.

Q. For how many years have they been doing the accounting work for Apex?

A. I believe since 1919.

Q. And what have your particular duties been with regard to the Apex account?

A. I have handled the entire audit assignment from 1929.

Q. So that you are the representative of the Mathieson, Aitken Company in connection with the auditing of the books and records of the Apex Hosiery Company?

A. I am.

Q. And are you thoroughly familiar with those books and records?

A. I am.

Q. It has been testified here by Mr. Steeple that a separate set of books was set up in order to keep the records of damage done at the plant. Are you familiar with those books, likewise?

A. Yes, sir.

Q. And were they maintained under your general supervision?

A. Yes, sir.

Q. That is, as accountant,—

A. Yes, sir.

Q. —as outside accountant for the firm?

A. That is correct.

Q. Now, did you make a complete audit of the books and records of the Apex Hosiery Company for the purpose of determining that company's profit or loss for the period January 1st to May 6th, 1937?

A. That was done in connection with our report for the six months ended June 30, 1937.

Q. And in making of that report did you make a specific audit of the business of the company for the period I mentioned, January 1st—

A. Yes, sir.

Q. —to May 6th, 1937?

A. I did.

Q. The business was open and running during that period, was it not?

A. It was.

Q. And do you have all of your working papers with you covering your report?

A. I have.

Q. And based upon your audit of the company's books and records for the period January 1st to May 6th, will you tell us what the company's profit or loss was for that period from its hosiery business operations alone?

MR. SIMONS:

I object to that. If Your Honor please, I don't believe that the testimony should merely be in a lump sum of that kind. I don't know what kind of audit was made. We don't know what the audit consisted of.

THE COURT:

You can cross examine now on the witness's qualifications to testify, if you wish.

MR. SIMONS:

Will you permit me to do that now?

THE COURT:

Yes, surely, on his qualifications.

(Direct examination suspended.)

Cross Examination

BY MR. SIMONS:

Q. Now, Mr. Langer, you made an audit of the books from January 1st to May 6th, inclusive?

A. As part of our audit for the six months ended June 30, 1937.

Q. Well, you made the audit when, June 30, 1937?

A. That is correct.

Q. At that time the books were where?

A. At the company's office.

Q. And where is their office?

A. Fifth and Luzerne.

Q. Did you make an audit at Fifth and Luzerne Street on June 30th?

A. No, not as of June—some time in July.

Q. And who closed those books?

A. The books weren't closed on June 30th.

Q. Who took care of the books before that time, during the six months period?

A. The bookkeeper.

Q. And who was that?

A. Mr. Dingas.

Q. Mr. Dingas, and was it your custom to make an audit of the books every six months?

A. Yes, sir.

Q. And were there inventories taken at the end of that period of time, physical inventories taken?

A. There was a physical inventory taken at June 30th.

MR. HIRSCH:

Keep your voice up.

BY MR. SIMONS:

Q. There was a physical inventory taken on June 30th?

A. As of June 30th.

Q. As of June 30th. You personally took that physical inventory?

A. No, sir, but I did go around with the employees of the company, and when they called off—they had taken the inventory and marked down the quantities, and I checked the list that they reported and called off to me against the total which they reported to me on the individual sheets.

Q. Well, you mean you checked merely the total figures?

A. Merely visual test.

Q. That is, tested just the figures; you yourself didn't take the inventories?

A. No, sir.

Q. And you didn't take the inventories at the beginning of the year?

A. No, sir.

Q. Now, are those the figures there you are quoting?

A. Well, I have our report here.

Q. May I see that?

A. Yes, sir.

Q. Well, may I see this?

A. Well, just—

Q. This is your work sheet, isn't it?

A. No, this is not the work sheet.

Q. Well, that is what you are looking at?

A. Well, I am looking at this here (indicating).

Q. Yes, well, may I see it?

A. Sure.

(Papers were shown to Mr. Simons.)

BY MR. SIMONS:

Q. Do you have your figures—where are your figures up to May 6th?

(The witness produced a report.)

MR. HIRSCH:

No, no, I don't know what all these figures are. He hasn't testified to this yet.

THE COURT:

No, you can't go into your whole cross examination, Mr. Simons, now,—

MR. SIMONS:

No.

THE COURT:

—but if you want to see whether he actually saw the books, and—

MR. SIMONS:

I want to see the report.

MR. HIRSCH:

He hasn't testified to the report yet. I don't want to permit Mr. Simons to rummage through all his papers.

THE COURT:

It is quite right.

MR. SIMONS:

If Your Honor please, he is going to testify from a report as to the profits.

THE COURT:

Well, Mr. Simons, you can't cross examine him on something he is going to testify to. You will have to postpone your cross examination until he has testified. If you want to cross examine him as to what he did there and what he saw, that is all right. In other words, if you develop that he didn't make any audit at all, that

would be a different proposition, but you can't fully cross examine him until he has finished.

MR. SIMONS:

All right.

BY MR. SIMONS:

Q. Now, Mr. Langer, you took the totals that appeared on your general ledger?

A. Yes, sir.

Q. That were compared by the bookkeeper?

A. Yes, sir.

Q. And you merely made up a statement from those figures of the general ledger?

A. No, sir, we made an audit of the accounts pertaining to those figures submitted to us at that time.

Q. Well, when you say you made an audit, what did you do?

A. We examined certain of the records in detail of the—

Q. Well, now, which records did you examine in detail?

A. Cash.

Q. You checked the cash against the bank?

A. Yes, sir.

Q. Now, that has nothing to do with the question of your profit and loss directly? That is an asset?

A. That is correct.

Q Now, take your question of your sales.

A. Yes, sir.

Q. What did you do with regard to sales?

A. We made a test of specific months.

Q. Well, when you say you made a test of specific months what does that mean?

A. That means we took certain specific months during the period and actually footed them to see

that the total agreed with the amount that the company shows that the sales amounted to for that particular period.

Q. In other words, you didn't take the adding machine tape figures, but you checked amongst the figures to see if the addition is correct?

A. That is correct.

Q. And that is as far as your check on sales was concerned?

A. Yes, sir.

Q. Now, what other check did you make on the books and records?

A. Made vouching with the expenses.

Q. Well, what do you mean when you say you vouched the expenses?

A. We examined the invoices pertaining to the respective purchases and saw they were properly distributed.

Q. And you had no difficulty checking all the bills and all the invoices during that period of time?

A. Not the particular periods which we examined.

Q. You had all your books and all your records there?

A. They were all there.

Q. And all the invoices were there?

A. Yes, to the best of my knowledge.

Q. Well, did you check them all?

A. Under my supervision, yes, they were checked.

Q. Well, now, as a matter of fact, you didn't check all the details of any of these sales or purchases or items of expense outside of the fact to see that they were in the books and properly posted?

A. I examined the invoices pertaining thereto.

Q. Every invoice?

A. Yes, sir.

Q. All right, now, what else did you do besides check the invoices and check your additions on the sales?

A. Vouched all the postings from the books of original entry.

Q. Did you personally check all the postings from the books of original entry to the ledger?

A. Not personally, but under my supervision.

Q. Well, now, what do you mean by under your supervision?

A. I had two other men with me on the assignment.

Q. And the two other men were who?

A. Were our employees, men of our organization.

Q. You mean two men of Mathieson, Aitken and Company?

A. That is correct.

Q. And they checked all the postings?

A. They checked the postings.

MR. HIRSCH:

Keep your voice up, please, so that everybody can hear you.

Can you hear him all right?

A JUROR:

Not very well.

MR. HIRSCH:

Keep your voice up, Mr. Langer. These ladies want to hear you, and so do the gentlemen.

THE WITNESS:

All right.

BY MR. SIMONS:

Q. And what else did you do?

A. Well, we made other tests and verifications sufficient in scope to satisfy ourselves as to the correctness of the entries made on the books.

BY THE COURT:

Q. How long did it take you to make the audit?

A. Approximately ten days.

BY MR. SIMONS:

Q. And what did you do on the matter of depreciation?

A. We used the rates which had been approved by the Department in 1934.

BY MR. HIRSCH:

Q. What Department?

A. Revenue Department.

BY MR. SIMONS:

Q. And did you apply your depreciation at that time?

A. At what time do you refer to?

Q. At the time of the audit, I mean, for that period.

A. I believe it was applied then.

Q. Now, were there any figures considered in that statement with regard to any business done or any action between May 6th and June 30th, any expenses during that period? Was that all considered in your profit and loss?

A. Would you mind repeating that question so I get that?

Q. Did you include in your audit and in your report of the expenses, payments of salary and payments made chargeable as an expense from the period of May 6th to June 30th?

A. We included that in our report.

Q. That was all included in your report?

A. Yes, sir.

Q. That is, all your overhead, all the items of salary and what other items would there be?

A. May I look in my report?

THE COURT:

Oh, don't go into it now.

MR. SIMONS:

No, no, if Your Honor please, I think that that phase of it is important.

THE COURT:

Well, it is important, but it is not the time to examine him on it now.

MR. HIRSCH:

To bring it to a head, I will object to further cross examination on the ground that this witness has shown his qualifications to testify.

THE COURT:

Then I will sustain it. You can examine—

MR. SIMONS:

If Your Honor please, may I object to his qualifications to testify?

THE COURT:

I will overrule your objection. Now, you can examine him as fully as you want as to the credi-

bility of his testimony after he gives it, but we can't go into that now, until he testifies.

MR. SIMONS:

Well, if Your Honor please, the reasons for my objection, if I may state them—I think it is important—are several. First of all, I don't doubt that Mr. Langer has made an accurate from the figures that appeared on the books, but you have several factors. First of all, there is no actual, physical inventory taken by him that he can check on June 30th. Secondly, there have been a lot of items included from May 6th to June 30th that I don't think are matters that can be considered in the question of computation of any profits or losses for that period of time.

MR. HIRSCH:

I haven't asked him about that period.

THE COURT:

That goes to the—

MR. SIMONS:

The audit, however, covers a six month period ending June 30th.

THE COURT:

That goes to the accuracy of his work and all that, but—

MR. HIRSCH:

May I proceed?

THE COURT:

Yes.

MR. SIMONS:

Enter my objection, if Your Honor please.

THE COURT:

Yes; it is overruled.

Direct Examination (Continued)

BY MR. HIRSCH:

Q. Before I ask you this question of profit and loss I am directing your attention now solely to the period of January 1st to May 6th. Did you make an audit of the books and records as of June 30, 1937 which would permit you now to give us the exact figures as to the profit or loss this business sustained during the period January 1st to May 6th?

A. I did.

Q. And was the audit which you made, made in the usual and customary manner, as followed by accounting practice?

A. Yes.

Q. As dictated by good accounting practice.

A. It was.

BY THE COURT:

Q. And was it made from the books and records regularly kept by the company, in the custody of the usual and proper officers, and supplied to you by them?

A. It was.

THE COURT:

Yes.

MR. SIMONS:

May I just ask one question along that line, if Your Honor please?

THE COURT:

Yes, all right.

BY MR. SIMONS:

Q. Did you take an actual, physical inventory on May 6th, 1939?

A. No, sir.

Q. '37.

A. No, sir.

THE COURT:

Go ahead.

MR. SIMONS:

Now, I therefore object to that figure, if Your Honor please.

THE COURT:

Yes, it is overruled.

BY MR. HIRSCH:

Q. Now, based upon your audit of the books and records what was the company's profit or loss for the period January 1st to May 6th, 1937?

MR. KATZ:

Just a moment, if Your Honor please, I object to the question on the ground that it is not a proper method of proving a loss sustained in this case, nor does it flow from any damage, nor does it flow from any unlawful acts committed by any of the defendants—

THE COURT:

Yes,—

MR. KATZ:

—in this case within the meaning of the Sherman Act.

—THE COURT:

—well, I understand your point and the discussion of the thing we had yesterday, and I will overrule the objection. All right.

THE WITNESS:

You refer now from hosiery operations?

MR. HIRSCH:

From hosiery operations alone.

THE WITNESS:

$110,575.50.

BY MR. HIRSCH:

Q. Was that a profit or a loss?

A. That was a profit.

BY THE COURT:

Q. May I inquire why you made the qualification "hosiery operations"? Did the mill have other operations?

A. No, sir, but—

MR. HIRSCH:

It had other income.

THE COURT:

It had other income?

BY MR. HIRSCH:

Q. Will you explain to the Judge what

THE COURT:

No, you don't need to. That is all I want to know.

BY MR. HIRSCH:

Q. What was the total volume of sales for that period, in dollars?

MR. KATZ:

Same objection.

THE COURT:

All right.

A. $2,284,262.08.

BY MR. HIRSCH:

Q. And how many—

BY THE COURT:

Q. I will have to ask you to give that to me again.

A. $2,284,262.08.

Q. All right.

BY MR. HIRSCH:

Q. And do you have the figures showing the number of dozens of pairs of stockings which were shipped during that period and which are represented by the sales figure of $2,284,262.08?

A. Yes, sir: 405,233 dozen.

Q. And based on a profit from hosiery operations alone of $110,575.50 during the period from January 1st to May 6th, 1937, and on sales—and on shipments, not sales, during that period of 405,233 dozen, what was the net profit per pair?

A. Approximately twenty-seven cents.

BY THE COURT:

Q. Per dozen or pair?

A. Per dozen

MR. SIMONS:

If Your Honor please, it is understood that covers that one period that you are talking about.

THE COURT:

Yes.

MR. HIRSCH:

That is correct.

BY THE COURT:

Q. Twenty-seven cents a dozen?

A. That is right.

Q. On what average price per dozen, do you happen to remember?

A. Not offhand.

Q. About what was it?

A. I couldn't say.

THE COURT:

All right.

BY MR. HIRSCH:

Q. Now, did you at my request break down the period January 1st to May 6th into days and weeks?

A. I did.

Q. And on a weekly basis what was the average net profit of the business during that period?

MR. SIMONS:

If Your Honor please, I object to that. I don't think that that is the manner of proving profits in a case of this kind. Subject of course, to our general objection and the whole line of examination, I think it is a question of taking periods of time and showing what happens over a long

period of time. He has only chosen a period of five months here.

MR. HIRSCH:

And the law only requires—

THE COURT:

What you mean is the average net profit per week?

MR. HIRSCH:

That is correct.

THE COURT:

I think it will assist us. I will overrule your objection.

MR. HIRSCH:

Go ahead.

THE WITNESS:

Would you mind repeating that question?

BY THE COURT:

Q. What was the average net profit per week during that period?

A. Well, I didn't break it down in weeks.

Q. All right.

A. Eighteen weeks was $110,575.50.

Q. That is eighteen weeks?

A. Eighteen weeks.

THE COURT:

Well, all right. Anybody can divide that that wants to. It is a pure mathematical operation.

MR. HIRSCH:

All right, it is approximately—

MR. SIMONS:

Well, now,—

BY MR. HIRSCH:

Q. Well, will you do it?

A. Certainly.

Q. I want that figure on the record.

MR. HIRSCH:

It is $6,111., if my opponents will accept that figure, subject to correction.

THE WITNESS:

How much is it?

MR. HIRSCH:

$6,111. per week, subject to correction.

THE COURT:

All right.

BY MR. HIRSCH:

Q. That period is the first eighteen weeks of the year, leaving thirty-four weeks for the balance of the year?

A. That is correct.

MR. HIRSCH:

There will be a certain phase of Mr. Langer's testimony which I will have to withhold, Judge Kirkpatrick. I mean, I can't ask him the accounting question until I get another witness in ahead of him.

THE COURT:

All right, any way you want to.

BY MR. HIRSCH:

Q. Did you make an audit of the books and records of the Apex Hosiery Company for the period May 6th to December 31, 1937, to determine the profit or loss sustained by the business during that period?

A. I made an audit as of December 31, 1937. That would be the six months covering from July 1st to December. That is embodied in our total report for the year.

Q. But as a result of the audit you made as of June 30th and the one you made as of December 31, 1937, are you able to compute exactly the profit or loss which the business sustained, the Apex business sustained, during the period of May 6th, 1937 to December 31st, 1937?

A. Yes, sir.

Q. And in making those audits—in making the audit of December 31, 1937 did you follow the usual and customary accounting practice, acceptable in the accounting profession?

A. I did.

Q. And did you follow the same methods and technique which you have described on cross-examination by Mr. Simons?

A. I did.

Q. What was the Apex Company's profit or loss for the period May 6th to December 31, 1937?

MR. KATZ:

Now, that is objected to, if Your Honor please, because innumerable elements may enter into this.

THE COURT:

Yes, I wonder if that is not just going to mix us up. What do you want to put that in for? How does that help us?

MR. HIRSCH:

Because I propose to follow it up by showing what our profits would have been if we had been permitted to operate uninterruptedly, and I am getting this figure in now, and the other figure will go in later, and the difference will be our loss. In other words, it is a question of being made whole, and we will prove that instead of making money, we lost money, and we will prove why, and I intend to follow it clearly through, and if I fail to sustain the proof on any item it can always be stricken from the record on motion.

MR. KATZ:

That technique may please Mr. Hirsch—

MR. HIRSCH:

A thing of this kind cannot be proved all at one time. It has to be done in segments and the whole picture put together.

THE COURT:

Well, yes, I know, but here is a long period to December 31st, and as Mr. Katz says—

MR. HIRSCH:

Well, Judge Kirkpatrick, this will be from hosiery operations alone, and I also intend by another witness to prove what our profit would have been, and I will prove that in a manner which is proper under the cases.

THE COURT:

Well, how is it different? In other words, you have established now that as you were running along you were making $6,111. a week. Now, you were closed down for six weeks.

MR. HIRSCH:

Well, we were closed down almost until November 1st.

THE COURT:

Well, whatever you were closed down as a result of the strike. Wouldn't that be your prima facie case? Is there any use of complicating it by showing—

MR. HIRSCH:

Let me explain, sir,—

THE COURT:

I can see—

MR. HIRSCH:

—instead of making a profit, let's use a little, simple figure, instead of making a dollar, we lose two dollars; we are out three dollars. Now, that is a simple case.

THE COURT:

Yes.

MR. HIRSCH:

So in this case I will prove by another witness what we should have made, what we would have made if we could have gone on uninterruptedly. I prove by this witness what we actually lost, and the difference is what is necessary to make us whole.

Now, I can withhold this question at this time and have it follow the other testimony of what we would have made, but I don't think that is terribly important, whether it goes in at this time or later.

MR. KATZ:

I think it is.

THE COURT:

All right, you withhold it, then, because I don't think it belongs in here at the present time. What does the evidence show about the length—has that been shown?

MR. HIRSCH:

Yes, the length of time; the plant resumed partial operation on August 19th. That was the first time a machine turned, and it wasn't until November 1st that the plant was running full—pardon me, it wasn't until November 1st that the major repairs were completed, which meant the plant could run full. I therefore have the right to show, which I will by a subsequent witness, the business we would have done if we had not been shut down and crippled by the strike, both from the possession of the plant and the physical damage, and what we would have made on that business. I mean, that is the profit that we are entitled to. That is a profit. Now, on the contrary, instead of making a profit we sustained actually a loss, because we were closed and not able to function, and the difference is the only amount that will make us whole. In other words, we are entitled to the difference between what we would have made and what

we lost as the recoverable item. Otherwise we are not made whole.

MR. KATZ:

But that is the whole issue, that is the whole issue.

MR. SIMONS:

If Your Honor please, I feel we are getting into a rather lengthy discussion here on matters that might be taken up at side bar, because I don't believe all those figures are relevant, and the cases do not hold that they are relevant. I think he is getting far afield in the matter of conjecture by presenting the testimony as he is doing now, and I object to it.

THE COURT:

I will sustain the objection at the present time.

MR. HIRSCH:

All right, I will put it in, then, at a later time.

BY MR. HIRSCH:

Q. You have given us the volume of business from January 1st to May 6th, 1937, in dollars. Will you give us the volume of business done by the Apex Hosiery Company based on your audit of its books from May 6th until December 31, 1937?

MR. SIMONS:

I object to that, if Your Honor please, for the same reason.

THE COURT:

Well, that is a different question. That bears

on the question. You see, it would be very simple if the mill had started full operation on June 23rd, we would have no difficulty about it, but here is a situation where the mill was partially crippled over a considerable period of time, and—

MR. SIMONS:

Well, but—

THE COURT:

—and the testimony as I remember it is that complete repairs were not made until the first of the year.

MR. HIRSCH:

That is right.

THE COURT:

Major repairs, as Mr. Hirsch has said, were made in November. Now, we have got to determine to what extent the mill was crippled, don't we? How else—

MR. SYME:

And to what extent. You see, there is a lapse of a period from June 23rd until the settlement of the strike when there is ordinary picketing, and when even the plaintiff doesn't contend that there was a violation of the Sherman Anti-Trust Act. Now, the plaintiff in this case wants to say that from May 6th until the time they resumed operations it was crippled because of the destruction of the machinery.

MR. HIRSCH:

That is our proof.

MR. SYME:

Now, just one minute. Isn't there another element entering into this picture? Certainly it is admitted if this plant was crippled by legitimate strike activities there would be no claim whatever. Now, there is a period from June 23rd when the plant was evacuated when there was ordinary picketing, when there was no sit-down strike, when the plaintiff and defendants were negotiating. Now, certainly during that period the plaintiff does not claim a loss of profits because of crippling of the plant.

MR. HIRSCH:

We certainly do.

MR. SYME:

The element of a legitimate strike enters into that and that must be taken into consideration, Your Honor.

MR. HIRSCH:

There is no evidence of that, if Your Honor please. The evidence is clear that the plant was so badly damaged that immediately following the evacuation of the plant the repairs to the damage began, and it wasn't from the time that they evacuated until August 16th, or 19th, that we even ran a machine or were able to run a machine. The evidence is clear that from that moment on we could only run partially until the major repairs were completed, and that all repairs were not completed until the end of the year, and it is a very simple matter, if Your Honor please, to show just what the result of this crippling was, and the result of our in-

ability to take orders and ship merchandise, by showing our actual experience during the remainder of the year, because if we ran and shipped they get credit for it in our profit and loss figures, and when we couldn't run, by reason of the only testimony in the case—what Mr. Syme is talking about isn't in the case, I haven't heard any testimony to that effect—the only reason that we couldn't run was because the plant had been so badly damaged and crippled it couldn't be run. That is the direct testimony of several witnesses.

MR. SYME:

It is the direct—

MR. HIRSCH:

Now, I don't care whether they were picketing on the outside, whether we were negotiating on the outside, the fact remains under all the testimony in this case, uncontradicted, that we couldn't operate the plant by reason of the damage sustained during the sit-down strike, and it is for the period that we were crippled and to the extent that we were crippled, as borne out by the evidence, that we are entitled to recover for the loss we sustained, and that is the way I am trying to prove our loss.

MR. SYME:

That is Mr. Hirsch's construction of the evidence. The evidence is also perfectly clear that the plant was evacuated on June 23rd, that negotiations were begun on June 23rd, that negotiations continued until the latter part of July, and that during that period there was legitimate picketing.

MR. HIRSCH:

There is no such evidence in the case.

MR. SYME:

Oh, yes, by your own witnesses.

MR. HIRSCH:

There is no evidence in the case that any picketing prevented us from operating the plant. The only evidence is that we couldn't operate because we were crippled,—

MR. SYME:

Well, of course, that—

MR. HIRSCH:

—irreparably crippled.

MR. SYME:

—is your construction of the evidence, but the evidence is there that there was an evacuation of the plant—

MR. HIRSCH:

We have the jury, then.

MR. SYME:

—on June 23rd,—

MR. HIRSCH:

We will leave that to the jury.

MR. SYME:

—and until the settlement of the strike there was no further damage or destruction of property, and the only way they were prevented from operating was by legitimate strike activities.

THE COURT:

Well, the question has to do with total busi-

ness done from May 6th to December 31st. I will overrule the objection.

MR. SIMONS:

If Your Honor please, may I just say one thing now?

THE COURT:

No, what is the use? I have ruled on the question.

BY MR. HIRSCH:

Q. What is the answer?

A. Would you mind repeating that question?

THE COURT:

Total amount of business, sales,—

MR. HIRSCH:

From May 6th to December 31st.

THE COURT:

—dollar sales and dozen sales, from May 6th to December 31st.

THE WITNESS:

Dollars: $1,575,252.16. Dozens, 275,791.

BY MR. HIRSCH:

Q. Now, did you make an audit of the books and records of the Apex Hosiery Company to determine the amount of fixed charges, carrying charges, expenses and salaries which the Apex Hosiery Company was forced to incur during the period from May 6th to August 19, 1937, which was the first date when they began any manufacturing operations.

MR. SIMONS:

I object.

MR. KATZ:

I object to the question.

MR. HIRSCH:

How many of you are going to object here?

MR. SIMONS:

Go ahead.

MR. KATZ:

I object to the use of the word "forced". There is no evidence in the case they were compelled to do anything.

THE COURT:

That is true.

MR. HIRSCH:

Leave out the word "forced".

MR. SIMONS:

If Your Honor please, I objected on the ground of proper accounting practice; I mean, Mr. Hirsch is trying to get us from both angles here. First of all, he says we are responsible for the value, the fixed value of that plant during that period of time, meaning the overhead charges, because of the fact they didn't have the use of the plant, and then he also says to us, "In addition to that you are responsible for profits that we would have made", which profits take into consideration the fixed value. Now, you will have to take either one or the other. We can't be responsible for both.

MR. HIRSCH:

No, I agree with Mr. Simons, that we can't recover for both.

MR. SIMONS:
Well, then,—

MR. HIRSCH:
Are you finished?

MR. SIMONS:
Go ahead.

MR. HIRSCH:
But because Your Honor has at the moment excluded the one figure I am proving the other figure, and then after having proved both figures I am going to ask Your Honor to rule on what I consider to be the proper theory, namely, the difference between what we would have made and what we actually lost, which will include this item, but if Your Honor should rule against me, then I would be entitled to what we should have made plus what we were actually—what we actually incurred during the sit-down strike—

THE COURT:
Well, now, gentlemen,—

MR. HIRSCH:
—and during the period we were closed.

THE COURT:
Well, now, gentlemen, it seems to me that the proper measure of damages here would be to apply the profit figure obtained during the operating period of January 1st to May 6th to the amount of business which you can show you were prevented from doing by reason of the strike. Now, that is all it is, and it is quite simple. I don't believe there is anything else to talk about.

MR. HIRSCH:

But in addition, Judge Kirkpatrick, that would have been the amount of profit by which our assets would have been increased, but on the contrary, instead of our assets being increased by a profit, they were decreased by the loss which we directly sustained as a result of this interruption of our plant,—

THE COURT:

No,—

MR. HIRSCH:

—and only by getting the difference—

THE COURT:

—I don't think—

MR. HIRSCH:

—would we be reimbursed in full—

THE COURT:

No, I don't think so. That was entirely up to you. If you wanted to, you could have shut down and stayed shut down.

MR. HIRSCH:

That is the point. We still would have had to incur certain fixed charges and carrying charges.

THE COURT:

No, you wouldn't. Suppose you had never opened up again.

MR. HIRSCH:

What has that to do with insurance, with taxes, with fixed charges? What would we do with depreciation of our plant and machinery?

THE COURT:

That is not lost.

MR. HIRSCH:

They are charges that go on whether we operate or not.

THE COURT:

That is not loss. You are getting something for your insurance.

MR. HIRSCH:

The cases say it is loss.

THE COURT:

What cases?

MR. HIRSCH:

The Rice case, which was just recently decided.

MR. SIMONS:

The Rice case is not a case under the Sherman Act at all.

THE COURT:

Let me say something.

MR. SIMONS:

I am sorry.

THE COURT:

Don't keep interrupting me, gentlemen. I don't get a chance to rule, even.

When you pay for insurance you are buying something. That is not a loss. You are getting it. When you pay for protection and watchmen and that sort of thing you are buying something here. I don't figure that that can be an

item of loss. It seems to me very plainly that the thing to do is to determine the amount of business, either units or weeks, I don't know yet whether we should apply a time basis or a dollar basis or a merchandise basis, to find the amount of business that you were prevented from doing by the strike, and then apply your per unit figure of profit, ascertained from January to May, to that basis, and I think that would get you the proper measure of damages in the case.

MR. HIRSCH:

That would fix, Judge Kirkpatrick, the amount of profits,—

THE COURT:

Yes.

MR. HIRSCH:

—but it wouldn't fix the other expenses for which we are entitled to be reimbursed by reason of the fact you must appreciate that while we were shut down we had to incur running expenses. We had no business to counterbalance that expense. We had no income to counterbalance that expense.

Now, let us assume, let us assume a crippled example. We start with a unit of a thousand dollars. We should have made one hundred dollars. That would make it eleven hundred dollars in assets. Instead, by reason of the shut-down we were forced to lay out two hundred dollars for expenses. We then have eight hundred dollars. Only by recovering three hundred dollars would we be made whole, and the law is that

we are entitled to be made whole as a result of damage sustained through any wrongful act of a litigant. Now we cannot be made whole if we only recover the one hundred dollars we should have made, when we are two hundred dollars out on our expenses. And, so, in this case, if we were only recovering the profits we would have made and not the losses we had to incur—and this is a case directly in point, sir,—

THE COURT:

Well, let me see it. I am open to conviction on the matter.

Suppose you get 22 Federal Supplement.

That case very clearly seems to say that that is a proper element to consider.

MR. SIMONS:

If Your Honor please, first of all, may I direct to your attention that that is not under the Sherman Act.

MR. HIRSCH:

That has nothing to do with it.

MR. SIMONS:

Wait a second—it has something to do with it, because there are a whole line of cases since 1890 and before that time that discuss the damages under the Sherman Act. That is a case for direct trespass that was brought in the Federal Court on the ground of diversity of citizenship, and the measure of damage in that case is different from the measure of damage in an action under the Sherman Act.

Now, all the cases under the Sherman Act dis-

cuss the question of the measure of damages, and they specifically say that you can take either one or the other.

MR. HIRSCH:

There is no such case there. There is no such case which says that you must take—

MR. SIMONS:

It is discussed from the time Sedgwick wrote his treatise on damage. He distinguishes those two and goes through a whole line of cases.

MR. HIRSCH:

The law of damages under the Sherman Act is exactly the same as in any other case in so far as proof of damages and the element of damage are concerned, and there is no distinction. The Sherman Act says "damage". It doesn't qualify it or define it.

MR. SIMONS:

Read the cases.

THE COURT:

Well, I will permit you to prove it in your way. You may be right about it. I will overrule the objection.

MR. HIRSCH:

Will you repeat the question, Mr. Rodebaugh, please?

THE COURT:

It does seem to me that you can add to the loss of profits the actual out-of-pocket expenses for maintenance you had to pay during the period, because obviously you weren't going to go out of business and you couldn't hold your

force together without paying certain necessary salaries and certain overhead, and you really weren't getting anything from that in the way of return.

MR. HIRSCH:

No income.

THE COURT:

I don't know about insurance. That is a different matter. I doubt very much that you can include your insurance in the loss, but you certainly should be able to include salaries of executive officers, that you would have to pay in order to hold them, and necessary expenses. I don't believe insurance is an item.

MR. HIRSCH:

I think it comes under fixed or carrying charges, sir, under that case. It says fixed and carrying charges.

THE COURT:

Well, I don't see why it is.

MR. HIRSCH:

Well, I don't mind eliminating it.

THE COURT:

I don't see why insurance is a loss.

MR. HIRSCH:

I don't mind eliminating it.

THE COURT:

But where you were compelled to pay out money for which you got nothing, that it seems to me should be a proper item of damage. Where you got something for it, then it is taken care of in your loss of profits item.

Go ahead, Mr. Hirsch, will you repeat the question?

BY MR. HIRSCH:

Q. Did you make an audit of the books and records of the Apex Hosiery Company to determine the amount of fixed charges, carrying charges and expenses, salaries, and so forth, which it incurred during the period—which it necessarily incurred—during the period May 6th to August 19th, 1937, which was the first date when they began any manufacturing operations? Limit it just to that period for the moment.

A. I did.

Q. And tell us, first, the total of those expenses, and then tell us—well, you can tell us in detail.

A. Want the total?

Q. Yes.

A. $149,852.87.

Q. And how much of that figure per day?

A. Approximately—

MR. SIMONS:

I object to that.

A. —one thousand—

MR. SIMONS:

If Your Honor please, I don't know that that is the figure to be considered in the matter.

MR. HIRSCH:

Well, I am asking just the daily breakdown, which is arithmetical.

THE COURT:

Go ahead.

THE WITNESS:

$1,168.98.

BY THE COURT:

Q. Now, what does that include, Mr. Langer?

A. That includes salaries of superintendence—shall I give the amounts in each case?

Q. Well, all right.

A. Six thousand—

Q. Are there a lot of them?

A. Quite a few; about twenty-five or thirty items.

Q. Well, read them down the list.

A. All right. Superintendence, factory supervision, indirect labor, mill supplies, taxes and water rent, depreciation—

Q. Well, you see, I don't think you are entitled to taxes and water rent, and I don't think you are entitled—go ahead.

A. Depreciation, insurance,—

Q. I don't think you are entitled to insurance.

A. Heat and light, general factory expense, boarding form rental and expense, freight and express, shipping wages, traveling expense, sales office rent and expense, salesmen's salaries, salaries of officers, office salaries, telephone, legal and accounting, office expense, postage, dues and subscriptions, general expense, Pennsylvania Capital Stock tax, Federal Capital Stock tax, and Social Security tax.

THE COURT:

Well, now, take an item—a small item, undoubtedly—but take an item like postage. That is not a loss. We don't know—he got his mail carried for the two-cent stamp or the three-cent stamp that he put on there. Do you claim that is all dead loss?

MR. HIRSCH:

I say, Judge Kirkpatrick, that any outlay of money which was properly made during that period when there was no income from any business, when we were shut down tight, represents a loss to us by reason of the fact that we had no method of recoupment out of sales and income. It was a dead outlay, with no income to counterbalance it, and I say, therefore, that all items which were properly expended—now, if you say, "Well, you had no right to write a letter", I would have to exclude it, or if you said, "You had no right to have insurance, you should have cancelled it during that period", I would have to waive and exclude it, but, obviously, we had to maintain our insurance, which was a charge even though our plant was closed. Now, that was an expense which was not counterbalanced by any income, and so long as it was a necessary and proper expense, and so long as you don't rule on any of these items by saying, "Well, that wasn't necessary",—

THE COURT:

I can't tell.

MR. HIRSCH:

—I say then we are entitled to be reimbursed for that, if we are not entitled to recover the loss sustained based on a profit and loss statement, which is the other element of damage—

THE COURT:

All right.

MR. HIRSCH:

—which I will endeavor to prove.

THE COURT:

I will let you prove it this way.

THE WITNESS:

Mr. Hirsch, may I correct the total there? I gave him the wrong amount.

BY MR. HIRSCH:

Q. What is it?

A. $149,852.87 should be changed to $122,742.95.

Q. $122,—

A. —742.95.

THE COURT:

Very well.

THE WITNESS:

The daily amount is correct.

BY MR. HIRSCH:

Q. Now, did the above items include any items covering expenses incurred by the business in connection with the repair or damage to plant, machinery and equipment?

A. No, sir.

Q. And did it include any of the salaries which the company expended to persons who were engaged in the repair of damage?

A. No, sir.

MR. HIRSCH:

I am through with my direct examination of this witness in so far as I have gone, and ask leave to recall him for the other questions which Your Honor thought should come at another time, when I have produced other witnesses.

THE COURT:
All right.

MR. HIRSCH:
Cross examine.

MR. SIMONS:
If Your Honor please, may I ask that this testimony be stricken from the record?

THE COURT:
I will deny the motion.

Cross Examination (Continued).

BY MR. SIMONS:
Q. Let me see your statement for 1937, to May 6th?

THE COURT:
I think before you start your cross examination we might take a ten minute recess.

(Recess at 11:15 A. M.)

JOSEPH C. LANGER, resumed.

Cross Examination (Continued)

BY MR. SIMONS:
Q. May I have your last item of expenses, the fixed expenses that you had?

MR. HIRSCH:

Oh, pardon me, I haven't concluded my examination.

THE COURT:

Yes, all right, finish it.

MR. SIMONS:

Oh, I am sorry, I thought you said you had.

MR. HIRSCH:

I did say it. I just recall something. I only went up to August 19th.

Direct Examination (Continued)

BY MR. HIRSCH:

Q. Now, Mr. Langer, beginning August 19th and running to December 31st there was some production at the plant?

THE COURT:

There was some what?

MR. HIRSCH:

Some production at the plant.

THE COURT:

Yes.

BY MR. HIRSCH:

Q. Is that correct?

A. From August 19th to the end of the year?

Q. Yes.

A. Yes, sir.

Q. Now, have you, based on your audit of the books and records of the company, compiled the amount of fixed charges and carrying charges, ex-

penses, salaries, et cetera, which the Apex Company incurred during the period of August 19, 1937 to December 31, 1937, in a way which would allocate those expenses as between the business done and that which should have been done.

MR. HIRSCH:

I better explain that to Your Honor.

MR. SIMONS:

I object to that, if Your Honor please. I think that—

THE COURT:

Oh, yes, all right. Now, let's hear about it, what the point is, first.

MR. HIRSCH:

Why, August 19th to the end of the year we ran on a part-time basis, in the beginning very little, and gradually stepping up production. I have asked Mr. Langer to, therefore, distribute these charges to the productive side of the business and to the unproductive. To give you a humble example, if our average production, which he will testify to, was—for argument's sake, I don't know what the exact figure is, one-third of capacity, then one-third of those fixed charges are set aside and not asked for in this action.

THE COURT:

Yes.

MR. HIRSCH:

Because they are compensated for by the production.

THE COURT:
Yes, all right.

MR. HIRSCH:
And the other two-thirds—

THE COURT:
I understand, it is all right.

MR. HIRSCH:
My question was a little involved.

THE COURT:
Yes, I was just wondering—

BY THE COURT:

Q. You first got the total amount of these same items of fixed charges from August 19th to December 31st, didn't you?

A. Yes, sir.

Q. And what was the total amount?

A. Well, may I amplify that statement somewhat?

Q. Well, does it have to be amplified?

MR. SIMONS:
That is taken subject to my objection?

THE COURT:
Yes, surely.

A. The thing, Your Honor, the repairs were all completed, that is, the major repairs were completed by November 1st, so no claim for overhead has been predicated in my figures beyond that point.

MR. HIRSCH:
Oh, that will restrict the period.

BY THE COURT:

Q. Then it is August 19th to November 1st?

A. To October 29th, to be exact.

BY MR. HIRSCH:

Q. To October 29th?

A. Yes.

MR. HIRSCH:

I am glad you told me that.

BY THE COURT:

Q. Did you get the total overhead for that period?

A. There are seventy-one days, at the daily rate of $1168.98, or a total of $82,—

Q. Now, wait, seventy-one days?

A. Yes, at $1168.98.

Q. Seventy-one days at $1168.98?

A. Total of $82,997.58.

Q. All right. Now, then, did you also calculate the average production during that period?

A. We took the actual production during that period and predicated upon the normal production, what those machines should be able to do.

Q. Well, where did you get that figure?

A. That was computed, when we calculated the U. and O. insurance, and a schedule was made of each machine.

Q. Well, now, you are assuming that you worked them full?

A. Assuming the normal capacity of that machine, after it reaches its maximum efficiency, in other words, while the machine is—

Q. Well, don't you think—don't you think that

should have been predicated on the experience—on our experience figure of January 1st to May 6th?

A. No, sir, because from August 19th some of these machines had been repaired, others had not.

BY MR. HIRSCH:

Q. No, but Judge Kirkpatrick means, could you take the production of the machines as they actually ran from January 1st to May 6th, and predicate your allocation on that production?

A. Well, it was on that same basis, because we used the normal dozens which that particular type of machine should be able to produce.

BY THE COURT:

Q. Yes, but where did you find out the normal dozen?

A. That was obtained from the plant superintendent.

Q. At full capacity?

A. Normal capacity, yes, what the machine should be able to—

Q. Don't you think it should be on the actual experience capacity from January 1st to May 6th, because, you see, we are starting with that as a yardstick to apply, and if the—I don't know whether that represents full-time capacity for every machine.

MR. HIRSCH:

I don't think it does, sir. I think it represents normal capacity, which contemplates peaks and valleys of production.

THE COURT:

Well, all right, I will take it as you have got it.

BY THE COURT:

Q. You have the total of eighty-two thousand. Now, what percentage of capacity?

A. We find the deficiency was about 21.88 per cent.

MR. SIMONS:

Oh, I didn't get that.

THE WITNESS:

21.88 per cent.

BY MR. HIRSCH:

Q. Deficiency.

BY THE COURT:

Q. Deficiency?

A. Deficiency.

BY MR. SIMONS:

Q What do you mean by "deficiency"?

BY THE COURT:

Q. In other words, that is the number of days, or the number of dozens, or the number of dollars —I don't care which—that they were under normal during that period?

A. Yes.

THE COURT:

And that is assuming that that was entirely due to the strike, or to the damaged condition of the machines, and I believe there is testimony to that effect.

BY MR. HIRSCH:

Q. And what is the figure, therefore, that—

A. Therefore, the claim is $18,159.87.

Q. Now, that represents the portion of fixed and carrying charges, expenses and salaries which necessarily had to be incurred and which was not compensated for by the ability of the company to produce.

THE COURT:

That is right.

A. That is right.

MR. HIRSCH:

Now, you may cross-examine.

MR. SIMONS:

If Your Honor please, may I ask that that latter testimony be stricken from the record? I think it is purely conjectural. It takes into consideration items that we don't know about except as mentioned collaterally in the other testimony, and I don't think it is substantial for consideration by the jury.

THE COURT:

No, I guess it is all right, provided his normal figure is right.

BY THE COURT:

Q. Now, you took 21.88 per cent of something?

A. Yes, sir.

Q. Now, what was the something that you took 21.88 per cent of?

A. I will explain that. We had a total of 359 machines in the plant, that is, leggers and footers, and we took each machine and applied a percentage each week from August 19th to October 29th.

Q. That is how you got your twenty-one per cent?

A. Yes.

Q. But what is it twenty-one per cent of?

A. It is twenty-one per cent of what would have been normal production.

Q. Well, how do you know that it would have been normal production? Who told you that? Where did you get that figure from?

A. That is the normal capacity of the machine.

Q. Well, who told you that? You don't know anything—

A. No.

Q. —about machines?

A. That was given me—

Q. Where did you get that figure?

A. —by the plant superintendent.

Q. Well, he just came and told you that was normal capacity?

A. Yes, sir.

Q. So you took that figure?

A. Yes, sir.

Q. Well, I don't know what "normal capacity" means. See, we don't know. If it is full-time working capacity I think it is too large—rather, it is too little, as a matter of fact. If you figure on deficiency.

A. We are only claiming—that is true, only twenty-one per cent as deficiency. The remaining machines of that average had been repaired and were capable of being operated.

THE COURT:

All right. Well, we will have to let it go at that and find out from Mr. Struve what the

figure was and how he got the normal operating capacity of those machines. It is all right.

Now, go ahead and cross-examine, Mr. Simons.

MR. SIMONS:

I am renewing my objection.

THE COURT:

Yes.

Cross Examination (Continued)

BY MR. SIMONS:

Q. May I see these papers?

A. Certainly.

Q. Where is the item that you have for—

A. Overhead charges?

Q. —general expenses, fixed charges?

(The witness indicated the figure.)

MR. SIMONS:

If Your Honor please, there are a large number of items on here which in my opinion I don't think should be given consideration. I would like to move on a number of these and ask that they be stricken from the record.

THE COURT:

I don't know what they are. They haven't been called out yet.

MR. SIMONS:

Well, now—

THE COURT:

Well, you have to examine him on them and find out just what they are.

MR. SIMONS:

All right.

BY MR. SIMONS:

Q. Now, you have superintendence, six thousand dollars. Are you familiar with what that is, how that is made up?

A. That is the salary of the superintendent.

Q. Who is the superintendent?

A. Mr. Struve.

Q. That is just that one salary?

A. Yes, sir.

Q. And that covers a period from May 6th to August 19th. How many weeks is that?

A. That is eight weeks, I guess—no, it is more than that. What is that period there?

Q. It is May 6th—

MR. HIRSCH:

How many days did you say it was before? Fifteen and one-half weeks, fifteen weeks.

BY MR. SIMONS:

Q. Now, you have been examining these books for a long period of time, haven't you?

A. I have.

Q. And Mr. Struve gets a regular weekly salary?

A. Yes, sir.

Q. And he is the superintendent in the plant?

A. Yes, sir.

Q. During this period of time the plant was closed?

A. That is correct.

Q. Now, Mr. Struve wasn't in the plant at all during that time?

MR. HIRSCH:

Up to August 19th?

MR. SIMONS:

Yes.

MR. HIRSCH:

Certainly he was.

BY MR. SIMONS:

Q. When?

A. I don't recall when Mr. Struve came into the plant. I can't testify to that.

MR. SIMONS:

If Your Honor please, I am just wondering what would be the easiest way of handling whether to take each item up as I go through and make my motion, or wait until I am completed with them.

THE COURT:

Well, any way you want to do.

MR. SIMONS:

Take, for instance, the superintendence. There is a superintendence charge of six thousand dollars. I don't think that is a fixed charge when the plant is closed.

THE COURT:

All right, make your motion.

MR. SIMONS:

I therefore move that that item be stricken from the record.

THE COURT:

It is overruled.

BY MR. SIMONS:

Q. Now, you have an item of factory supervision.

THE COURT:

I tell you what, I can save you trouble, it is understood that you move to strike out each and everyone of those items, and they are all overruled unless I change my ruling. That will protect you and save time.

MR. SIMONS:

All right.

BY MR. SIMONS:

Q. Now, factory supervision?

A. That represents the salaries of foremen and forceladies which—

Q. Do you have a list there—

MR. HIRSCH:

Let him finish.

BY MR. HIRSCH:

Q. Go ahead, which what?

A. Which is the first part, from May 6th to some date—I am not definite what date, but I think until

the date that they came in—was only one-half of their regular salaries.

BY MR. SIMONS:

Q. Do you have the list, have the schedule of those salaries?

A. There is a schedule, yes.

Q. Where is that schedule?

A. We have them here. I have it among my papers, and also in the salaries.

Get me the work papers there.

BY MR. HIRSCH:

Q. What book do you want? Do you want your bag?

A. Yes.

(Papers were handed to the witness.)

THE WITNESS:

What period is that?

MR. SIMONS:

May 6th to August 13th.

THE WITNESS:

I haven't got my schedule in here, I am afraid, I can get that here. I thought I had it in my papers, but they aren't—I have the total for the year.

BY MR. HIRSCH:

Q. What do you want, your own working papers?

A. Yes.

Q. Do you want us to phone the office?

A. Yes, you can.

BY MR. SIMONS:

Q. Do you have the pay-roll sheets of the company here to show the pay-roll from May 6th to August 19th? It would be included on that pay-roll sheet?

A. Yes, it should. It should be on that pay-roll sheet.

(Discussion off the record.)

BY MR. SIMONS:

Q. Do you have it in your working papers anywhere?

A. I have it in my working papers, but it isn't here. I will call the office.

MR. HIRSCH:

Do you want me to call somebody?

(Discussion off the record.)

THE WITNESS:

Mr. Steeple, can you call the plant? Get Mr. Steeple to call the plant to get the salary book down here. This doesn't include it. We have to start with May 6th. This starts with July 2nd.

BY MR. SIMONS:

Q. Now, what record do you have there?

A. I have the actual salary sheets from July 2nd.

Q. Well, suppose I look at those for a minute.

A. Yes.

Q. Is this the complete salary on the pay-roll sheet of the factory for the week ending July 16th?

A. That is the complete salary pay-roll for the week ending that date.

Q. July 16th?

A. Yes, sir, that is the salary pay-roll.

THE COURT:

Well, gentlemen, can't you make a little better time here?

MR. SIMONS:

If Your Honor please, I don't see how we can. We have this situation. There have been items of pay-roll presented before that we have had, and been told that that is part of the expenses of that period of time. Now, here is another pay-roll coming along, and in quite a substantial sum, and we have got to check the items to see just where they are. I don't relish this delay at the present time and holding up Your Honor on the matter.

THE COURT:

Well, I am sorry, but I don't think we can sit here and wait while you check it up. I think you will have to go ahead and cross examine as best you can. There was no concealment about this fact, was there?

MR. SIMONS:

It isn't a question of any concealment, except we have never seen these figures before. These are some of the matters that we didn't see and didn't know about.

THE COURT:

Well, what do you suggest? I don't want to be in any way unfair to you.

MR. SIMONS:

We don't know how some of these items are made up. I mean, there are just total figures

here, and that is all. I would like to get the component parts and see what they consist of.

THE COURT:

Well, can't you ask the witness that?

MR. SIMONS:

Well, he doesn't know, because all he has here is the figures, he doesn't remember the details.

MR. HIRSCH:

He will have his papers shortly. He will have all the detail. If we can go on to another phase of the direct examination on cross examination I think by the time Mr. Simons would finish with that he would have his working papers on these items, and we could proceed quickly with this.

BY MR. SIMONS:

Q. The question of factory supervision, who would be included in that, if you know?

A. I believe it is all the foremen and foreladies.

Q. Who were in the plant prior to May 6th?

A. That is correct.

Q. And who were not working during that period of time from May 6th to August 19th?

A. Some were working and others were not, I presume. I mean—

Q. Well, did you have the charge here, were they or were they not working?

A. Some were working. I couldn't tell definitely unless I saw the names on the salary list to determine which were working.

Q. Well, if they were working would you charge it to this account?

A. They would—no, sir, because those which were working, they are the ones which we disallowed, took out, because they were covered in the other claim.

BY MR. HIRSCH:

Q. On the repairs?

A. On the repairs.

BY MR. SIMONS:

Q. Therefore, this item of $3264.25 is for those who were not working?

A. That is—I would say that is correct, as far as I know.

Q. And if you would charge under factory supervision, they were factory foremen?

A. That is correct.

MR. SIMONS:

Now, subject to checking that further, if Your Honor please, I make my same motion at this time.

MR. HIRSCH:

You don't have to.

MR. SIMONS:

All right.

BY MR. HIRSCH:

Q. Were they the people that were paid half-rate?

A. Yes, sir.

MR. HIRSCH:

They were paid half-rate.

BY MR. SIMONS:

Q. May I just go back to the item of superintendence? You said that that was for Mr. Struve?

A. Yes, sir.

Q. And checking your pay-rolls here, you have Mr. Struve down at two hundred dollars a week on these pay-rolls, is that correct?

A. That is correct.

Q. And you have charged up there six thousand dollars for a period of approximately fifteen weeks?

A. Well, there is—there is another—

Q. That would make it four hundred dollars a week, wouldn't it?

A. Yes, well, there is another item of salary that Mr. Struve gets in addition to what is on that pay-roll, that doesn't appear on that pay-roll at all. You asked me what was on the pay-roll, that is correct, the two hundred, but there is an additional amount that Mr. Struve gets direct that doesn't enter in the pay-roll, into that particular pay-roll.

Q. Well, what is it chargeable to?

A. Charged to salaries, in the ledger.

Q. Well, do you have another pay-roll sheet besides this one?

A. No, there is no other pay, it is just weekly checks that are drawn.

Q. And that is charged to the pay-roll account?

A. To this salary account, yes, sir.

Q. Now, what is your question of indirect labor?

A. That is mostly maintenance men, carpenters, and so on.

Q. Carpenters?

A. Carpenters, men around the plant, maintenance men, watchmen and maintenance men.

Q. And were those men paid during the time that they were not at work?

A. I couldn't answer that question.

Q. Well, you have an item of $5,098.82 for indirect labor. Does that represent payments of money to people who were not working during all that period of time?

A. I couldn't answer that question without looking at the records.

MR. HIRSCH:

There were some watchmen there, some watchmen were working.

MR. SIMONS:

Well, you have charged us for all the watchmen that were working.

MR. HIRSCH:

Not under damage.

MR. SIMONS:

Oh, yes.

(Discussion off the record.)

THE COURT:

The witness says he doesn't know.

BY MR. SIMONS:

Q. Do you know what mill supplies represents?

A. Just merely what they indicate, mill supplies, just miscellaneous items.

Q. Well, do you know anything about that item?

A. Only insofar as that they represent purchases which we vouched at the time of making the audit. What they represent I couldn't say.

Q. Do you have the breakdown of that item?

A. There is a charge in the records, and we would verify by the actual invoices, if you want to prove it.

Q. Well, do you have the breakdown on that here at the present time?

A. Yes, we have the ledger here, and that should tie in with that paper.

Q. Well, can we check that and see what it is?

A. Yes, I believe you can.

MR. HIRSCH:

Suppose you come down here and use your books here. Keep your voice up so everybody hears you and testify from down here. Keep your voice up so everyone can hear you.

(Discussion off the record.)

THE WITNESS:

We have in the mill supplies, Your Honor, we charge in smocks and other items. Mr. Simons is asking why some of these credits appear in the account.

MR. SIMONS:

I am first asking what the debits to that account are.

THE WITNESS:

The debits to the account?

MR. SIMONS:

I mean the charges, the items for expense. You have here just total sums.

THE WITNESS:

Yes, and they are supported by the invoices.

BY MR. SIMONS:

Q. Well, can we see the invoices and know what it is, or can you tell us what it is?

A. Well, I will have to look in the voucher register.

Q. Do you know the nature of the items?

A. Nothing more than they represent general mill supplies, Mr. Simons.

Q. Well, what do you mean by mill supplies, what does that mean?

A. Hardware supplies, electrical supplies, anything of that nature, general mill supplies, and smocks for the girls, and overalls, and things of that sort which they in turn sell to the girls and the men, and then, of course, these credits appear in the account.

Q. Well, you had no occasion to buy any of that from May 6th to August 19th?

A. Well, let's see. No, there would be nothing in there, there is only one item in there in August, for $1,222.86, and the only way we could find that out—probably that is the items bought from August 19th on up to the end of August, for that particular month, because there was nothing bought during the shut-down period.

Q. Well, you have, in July you bought $181.46, June, $15.00, in May $1,303., now, what does all that represent?

A. Well, as I just got done saying, it represents general mill supplies that they bought. In May they would no doubt be buying supplies, which they paid for in May, ended up in May, which represented purchases for April.

Q. Can you look at your vouchers and let us know what that is?

A. The voucher register wasn't brought down here and we haven't the bills here.

MR. SIMONS:

If Your Honor please, it seems to me that that is an item that is certainly not a proper charge here.

MR. HIRSCH:

These are all items which were available to the accountant for the defendants when he made his examination. Whether he examined them or not I don't know, but they were all available to them.

MR. SIMONS:

If Your Honor please, I don't like these constant assertions of what was available to us. Mr. Ladenheim is here. I would like to ask him whether or not he ever examined any of these vouchers or saw them.

MR. HIRSCH:

I am not interested in whether he examined them. They were available.

MR. SIMONS:

We weren't given everything. We were shown certain things, and everyone had fifteen people around to make sure we hadn't any more.

THE COURT:

Is there an objection?

MR. SIMONS:

I object to that item of mill supplies as not being properly identified, as not being a proper item of charge.

THE COURT:

Well, do you think the purchase of overalls is an item of loss, overhead, and that sort of thing?

MR. HIRSCH:

No.

THE COURT:

I don't, either. I don't see why you put all these picayune items in here and boost this thing up with a lot of doubtful stuff. There is plenty that can be easily identified. What on earth did you put in buying overalls for?

MR. HIRSCH:

Because the accountant when he prepared this prepared all the charges that they incurred during the time they were shut down.

THE COURT:

Well, I know, but it obviously is not an item of damage.

BY MR. SIMONS:

Q. The next item you have is taxes and water rent, $3,672.58.

A. That represents the proportionate share—

THE COURT:

I will grant the motion and strike that item entirely.

MR. HIRSCH:

How much is that item?

THE COURT:

I don't remember.

MR. SIMONS:

$3,672.58.

THE COURT:

$3,672.58. That is fuill supplies.

BY MR. SIMONS:

Q. The next item is depreciation, $60,999.67.

MR. HIRSCH:

Explain that.

BY MR. SIMONS:

Q. Well, now, that is depreciation that you have charged off on your—of the book value?

A. Yes, sir.

Q. As they appeared on the books, the book figures, purchase figures?

A. That is correct.

Q. For your plant, equipment, furniture, fixtures,—

A. That is correct.

Q. —supplies?

A. No, not supplies.

Q. Didn't include supplies there?

A. No, sir.

Q. Now, those, most of the—most of the machines have been purchased when?

A. I couldn't—pardon me, I couldn't answer that offhand; various dates.

BY THE COURT:

Q. Is that the same rate of depreciation charged while the plant was in use?

A. Yes, sir.

THE COURT:

Well, I don't believe that is an item, is it?

MR. HIRSCH:

Yes, sir.

MR. SIMONS:

I don't think it is, if Your Honor please.

MR. HIRSCH:

If Your Honor please, depreciation enters into every profit and loss statement of every business. It is a proper, usual and customary item of expense.

THE COURT:

Oh, I understand that, but—

MR. HIRSCH:

Now, if we weren't able to overcome the depreciation which we would ordinarily take by doing business and receiving income—because when you figure your profit and loss, when you are running, you deduct depreciation from whatever the gross profit is, it is an item of expense—if we weren't able to operate, that is a properly chargeable item. That is what we had to charge ourselves, and always charge ourselves with, when we were running, and, therefore, we have the right to recover it now when we have no counterbalancing income.

THE COURT:

All right, how much is it?

MR. SIMONS:

If Your Honor please, may I just say this? At the time of the question of the repairs to the machines, when we discussed matters of de-

preciation, the argument then was, "This is only a book entry".

MR. HIRSCH:

That is right.

THE COURT:

Does this include depreciation on the machines?

MR. SIMONS:

On the machines. That is the major portion of this depreciation.

THE COURT:

The damaged machines were repaired, weren't they?

MR. HIRSCH:

Yes, sir, but the original cost, the repairs as such were not capitalized, naturally, but the original cost of the machines, if there was any residual value there, that was depreciated at the usual rate.

MR. SIMONS:

In other words, Your Honor, we are being charged with depreciation on total purchase price of ten per cent a year.

BY MR. SIMONS:

Q. That is your depreciation?
A. Eleven per cent.
Q. What per cent?
A. Eleven.
Q. Eleven per cent a year.

MR. SIMONS:

In addition to that we are also being charged

with the cost of putting these machines in repair and possibly putting them in at least as good or maybe better condition than before. I don't think this is a proper charge.

MR. HIRSCH:

That is fully proper. There should be a double charge, for the reason that after we depreciate it they come along and damage it, and we have to put it back in the same condition it was. That is extra expense.

MR. SIMONS:

They didn't even take depreciation on the then condition value of the machines, they took it on the cost. I think it is an unfair charge.

MR. HIRSCH:

So long as he charged it the way he did in other years I think it is a proper charge.

THE COURT:

I will overrule the objection.

MR. SIMONS:

If Your Honor please, may I go further than that?

BY MR. SIMONS:

Q. Do you have your plant ledger here?

A. Yes, sir.

Q. May I see that plant ledger, please?

THE COURT:

You will note, however, Mr. Hirsch, that this coal company case refers to depreciation through disuse.

MR. HIRSCH:

Pardon me?

THE COURT:

This coal company case refers to unavoidable depreciation through disuse. Now, this is the same depreciation that has been charged all along?

MR. HIRSCH:

This is, I think, the same type.

THE COURT:

No, this is an item of depreciation caused by disuse. That was the corrosion and all that—

MR. HIRSCH:

Let me say this, Judge Kirkpatrick, under accounting law let me ask the question of the witness.

BY MR. HIRSCH:

Q. What kind of a charge is depreciation?

A. It is a reduction in the value of an asset from wear and tear.

Q. No, but what is it known as? Is it a fixed charge?

A. It is a fixed charge.

MR. HIRSCH:

It comes under accounting law under fixed charges. Depreciation is a usual and customary fixed charge. It appears in every accounting statement you have ever looked at.

THE COURT:

Oh, I understand that, it isn't necessary to advise me of that fact, but it is a question

whether it is an item of damage here. However, I am going to allow it. How much was it?

MR. SIMONS:

Well, now, if Your Honor please, I want to ask some further questions on this matter of depreciation before you—

THE COURT:

Would you mind telling me how much it was?

MR. SIMONS:

$60,999.67.

THE COURT:

All right, now, go ahead.

BY MR. SIMONS:

Q. This is your plant ledger?

A. That is right.

Q. In which you show the original invoice or the cost price of the machines?

A. That is right, but this is the transfer. Have you the other book, Mr. Steeple?

Q. What is this?

A. That is the transfer, just machines sold or disposed of.

Q. Well, but you had these machines?

A. Yes, but it depends on what date they were sold.

Q. Here is March 20th. I don't know what date that is.

A. That would be out at that time, then.

Q. Of what year?

BY MR. HIRSCH:

Q. Is this the book you want?

A. Yes. Here it is (indicating).

BY MR. SIMONS:

Q. Now, this reserve for depreciation which you set up was eleven per cent that you charge each year against a reserve account, so that at some time in the future if you have to replace these machines you will have been charging off a certain amount each year instead of charging it off at one time?

A. That is correct.

Q. That doesn't mean that it is actually depreciated that amount, but you are merely setting a reserve for what is likely to happen in the future?

A. We believe that the machines—that the rate we are using is an adequate rate, and it is a rate which was established by the Internal Revenue Department in 1934, by the Engineering Section.

Q. They allowed you eleven per cent per year, or they figured the lifetime of that machine as approximately ten years?

A. Nine to ten years.

Q. Nine to ten years. Do you mean to say, therefore, at the end of nine to ten years your machines are fully, totally depreciated and of no value whatever?

A. They are fully depreciated, but I wouldn't say they have no value.

Q. Now, you have figured the value of those machines and have sold some of those machines during 1937 and 1938, is that correct?

A. That is correct.

Q. And what did you get for those machines when you sold them?

A. To the best of my—

Q. What is the average price?

A. I would say approximately thirteen hundred to fifteen hundred dollars.

Q. And some machines you got as high as twenty-three hundred dollars for?

A. That may be correct, I don't know.

Q. And you figure that you, of course, didn't sell your best machines?

A. I don't know what type machines that were sold.

Q. And you have other machines of like character in the plant?

A. I presume so.

Q. Now, you take this number 3 footer, it was purchased on—

BY THE COURT:

Q. Is that—pardon me—is that sixty thousand on the entire plant as well as the machinery?

A. That is on everything.

MR. HIRSCH:

That is everything.

BY THE COURT:

Q. Are you figuring eleven per cent on everything?

A. Oh, no.

Q. I didn't think so.

BY MR. SIMONS:

Q. You mean that includes depreciation on the building?

A. That includes depreciation on the building.

Q. What depreciation did you charge on the building?

A. I think about two per cent.

Q. And what value did you carry the building for?

A. I would have to look that up. I think it is around eight hundred and some odd thousand.

Q. What is the building assessed for for taxation purposes?

A. I don't recall offhand.

Q. Approximately, or can you find out exactly for me.

MR. HIRSCH:

Something like three hundred and eighty-five.

MR. SIMONS:

Three hundred and eighty-five thousand?

MR. HIRSCH:

I think that is the answer.

BY MR. SIMONS:

Q. And you are charging depreciation, of course, on your eight hundred thousand?

A. On the original cost, yes, sir.

Q. And how old is that building?

A. That I don't know offhand. There was three buildings erected there. I don't know the exact dates.

Q. And how old is the oldest building?

A. That I couldn't say offhand.

Q. Give us an idea.

A. No, I haven't the slightest idea.

Q. Some of those buildings have been up possibly more than twenty years, haven't they?

MR. HIRSCH:

The oldest building was taken over by us in 1922. That is all we know.

MR. KATZ:

Is he the witness?

MR. HIRSCH:

I am trying to give information.

BY THE COURT:

Q. Pardon me, this item of depreciation of sixty thousand, is that in August 19th to October 29th, or is it also the entire item from May 6th to October 29th?

A. It is that period, whatever is on that sheet, Your Honor, May 6th to—

Q. May 6th to August 19th?

A. Yes.

MR. SIMONS:

May I just continue with the machines, and I will come back to the real estate after that, if Your Honor please.

BY MR. SIMONS:

Q. Now, number 3, machine number 3, a footer, was purchased on June 27, 1929, for sixty-two hundred dollars. You have added to that the freight, hauling, and the erecting and several other items, and you have depreciated on that machine as of December 31, 1936, $5,757.78?

A. Yes, sir.

Q. Now, in previous years you had been charging $357.98 depreciation on that machine per year?

A. If that is what the records show.

Q. That is what the records show, and during 1936 and also during 1937 you charged $715.96?

A. May I look at that?

Q. Certainly you may. It is your records.

A. That is expense, that is right.

MR. HIRSCH:

Mr. Langer, keep your voice up.

(Discussion off the record.)

THE WITNESS:

That is still $715.96. The thing was, in those days we put depreciation on the books semi-annually.

MR. SIMONS:

Oh, I see.

THE WITNESS:

And it was only $357. This is the total for the year, $715.

MR. SIMONS:

I see.

BY MR. SIMONS:

Q. Now, that machine was depreciated about—over ninety per cent on the 31st day of December, 1936, is that correct?

A. If the records show that.

Q. Yes, and despite that fact you continued charging depreciation after that in 1937 and also in 1938?

A. We don't over-depreciate. As soon as the machine is fully depreciated we cease charging depreciation.

Q. But the machine is still in your plant?

A. Still in the plant.

Q. And the machine in your opinion is worth at least thirteen to fifteen hundred dollars.

MR. HIRSCH:

He doesn't know. I object to it.

BY MR. SIMONS:

Q. Well, those were the sales that you made?

MR. HIRSCH:

The witness doesn't know what that machine was. I object to that.

THE COURT:

It is no ground that the witness doesn't know; if he doesn't know he can say so. I don't know whether he knows or not. That is not an objection to the question.

BY MR. SIMONS:

Q. Now, the same applies also to your matters of the equipment that you add to the machine?

A. Yes, sir.

Q. What do you call that?

A. Attachments.

Q. Attachments, and the attachments on the machine are fully depreciated also, aren't they?

A. In cases where they have been fully depreciated.

Q. Well, we are talking about this particular machine. That is $363.93?

A. Yes, it was fully depreciated in 1938.

Q. That is right, in 1937 it was $297.44 depreciated?

A. At the end of 1936 the total reserve for depreciation was $206.00.

Q. That is right, in 1937—

A. In 1937 we charged in $90.98.

Q. So that that was fully depreciated?

A. It became fully depreciated in 1938, not before. It wasn't depreciated in 1937.

Q. Now, take machine number 4, which is also a footer. You have a cost there of $6,592.75, including all the attachments and invoice price of the machine, and on December 31, 1936 that was depreciated $5,004.23, and equipment of the value of $369.00—for attachments, rather, the value of $369.45 was depreciated to the extent of $209.57. Is that machine still in the plant?

A. To the best of my knowledge, yes.

Q. Is it still being used?

A. To the best of my knowledge.

Q. And from the records and books and papers and whatever you know, is it as good as those machines that were sold?

A. I can't testify to that.

Q. It is in use at the present time—

A. To the best of my knowledge—

Q. —as a machine?

A. —it is being used.

Q. And number 5, also a footer, you have a total cost there, including all your various items, of six thousand, five hundred and eighty-nine, $6,589.00, and on December 31, 1936, that was depreciated $5,040.20. That is almost ninety per cent depreciation.

THE COURT:

Well, do you think it is necessary to go through every machine?

MR. SIMONS:

Well, I wanted to get enough of them on just to indicate—

THE COURT:

Well, there is plenty now. They took a straight line depreciation right from the beginning to the end. That is obvious.

MR. SIMONS:

We have checked items of depreciation. We found there are innumerable machines totally and entirely depreciated in 1936, December 31st. I wanted to get to one of those machines.

MR. HIRSCH:

All right, and if you can show us where we took additional depreciation after they were depreciated one hundred per cent—

MR. SIMONS:

I can't show you anything.

MR. HIRSCH:

I will withdraw that item.

MR. SIMONS:

I want to show those machines are still in use at this time, even though they are totally depreciated, and, therefore, this is not a fair charge.

THE COURT:

I think that would be agreed.

MR. HIRSCH:

I agree to that thoroughly.

BY THE COURT:

Q. But none of those are included in this depreciation charge?

A. No, any machine fully depreciated prior to 1936 has no depreciation in that figure.

Q. Yes.

A. We haven't over-depreciated.

MR. SIMONS:

But you are still using those assets,—

MR. HIRSCH:

Admittedly.

MR. SIMONS:

—and they still have a value.

MR. HIRSCH:

Admittedly.

MR. SIMONS:

May I, therefore, state for the record that the records of the company will indicate that practically all of their machines have been depreciated to possibly eighty to one hundred per cent.

BY MR. SIMONS:

Q. Is that a fair statement?

A. I wouldn't know unless I check it.

MR. SIMONS:

Well, I have.

THE COURT:

Well, a very large number of the machines.

BY MR. SIMONS:

Q. And the same machines for which you charged

depreciation are still in use at the plant at the present time?

A. Repeat that again, please.

Q. The same machines for which you charge depreciation in that period from May 6th to August 19th are still in use at the plant?

A. No, I wouldn't say that, because some of those machines might have been sold.

Q. I see.

A. Since that time.

MR. SIMONS:

If Your Honor please, I again renew my objection, to strike out the matter of depreciation. I feel that, although it has been carried here purely as a bookkeeping entry and nothing more, there is no indication as to the extent of the depreciation, I feel that this item is quite excessive and would justify the consideration—

THE COURT:

The only question is whether they charged too much depreciation.

MR. SIMONS:

That is it.

THE COURT:

That is about all.

MR. SIMONS:

We have proved—

MR. HIRSCH:

And that is—

MR. SIMONS:

Do you mind if I finish?

MR. HIRSCH:

Go ahead.

MR. SIMONS:

We have proved prior to this time they depreciated these machines practically eighty per cent, ninety per cent, in some cases they say one hundred per cent. Those machines it has been testified are still worth thirteen to fifteen hundred dollars.

THE COURT:

That is all I have in mind. It is only a question whether their rate of eleven per cent is too high.

MR. SIMONS:

Even though the rate of eleven per cent may be proper, that merely means the Government says to you you have the right to anticipate possible depreciation and obsolescence of those machines during a period of nine years, nine or ten years, and you may charge that off against your profits as an anticipated possible loss. That does not mean merely because you do that as a bookkeeping entry that that is an actual and definite loss, because in this case we show it is not. Here they have used these machines for ten years, now, and more, and they are still in use, and still have a value of thirteen hundred dollars, which is approximately twenty per cent of the value of the machines.

THE COURT:

But they have not taken in this item any depreciation on any machine has been fully de-

preciated, that is understood, the witness so testified, so I will overrule your objection. You go ahead.

MR. SIMONS:

Grant me an exception.

BY MR. SIMONS:

Q. Now, how about your real estate? Do you have a breakdown of the total depreciation for the machinery and equipment?

A. Yes, sir.

Q. Where is that?

A. It is in the plant ledger.

Q. I don't mean the details, I mean the total sum figure which you have taken.

A. We take it right from the books.

Q. You have depreciation somewheres in your books. Is this your general ledger (indicating)?

A. Yes.

Q. You could find depreciation in your plant and equipment, couldn't you?

A. Yes, on the—

Q. This is just the details, isn't it?

MR. HIRSCH:

You mean of the sixty thousand how much of it represented plant and how much of it represented equipment?

MR. SIMONS:

That is right.

MR. HIRSCH:

Give him the total of that.

BY MR. HIRSCH:

Q. How much was on equipment and how much on the plant, in dollars? Read it into the record if he wants it.

A. $7,704, that is for buildings; and $53,295.67 for machinery and equipment.

MR. SIMONS:

Now, wait a second. Of course, our contention on the matter of machinery and equipment is directed to the sum of $53,295.67.

BY MR. SIMONS:

Q. Now, on the matter of the building, you have deducted two per cent depreciation on the value of eight hundred thousand dollars?

A. Of building, that is correct, yes.

Q. Do you have your building account here

A. Yes.

Q. Is that in your general ledger?

A. Yes, it is in the general ledger.

Q. May I see it?

A. Yes, sure.

(The witness produced the book.)

BY MR. SIMONS:

Q. Now, where is your reserve for depreciation on the building?

A. It is all in the one account, reserve for depreciation is all in one account. It is combined, the whole thing.

Q. No, wait a second, where?

A. Under reserve for depreciation.

Q. You don't mind if I try to find it here?

A. It will be under the R's.

Q. Reserve for contingencies?

A. That (indicating).

Q. Well, how can you tell what it is?

A. I can give you the breakdown.

Q. You don't have the building in here?

A. Yes, it is all in here, the whole thing, the whole thing (indicating).

THE COURT:

What are you trying to ascertain now?

MR. SIMONS:

I want to get the amount of depreciation charged off to the building.

BY THE COURT:

Q. Well, what do you think it was?

MR. SIMONS:

Here it is.

BY MR. HIRSCH:

Q. What is the figure?

BY MR. SIMONS:

Q. Now, you have charged on your books and records the value of the building as $872,663.66?

A. That is correct.

Q. Now, as of December 31, 1937, which includes that whole year, and which are the figures that you have available at the present time,—

A. That is right.

Q. —you don't have the others, you have charged off as reserve for depreciation, $306,519.47?

A. Over the period of years.

Q. Over the period of years, and your rate of depreciation is three per cent for the garage, three

per cent on the old building, two and one-half per cent on buildings 1, 2 and 3, five per cent on the oil heater, and five per cent on boilers and electrical equipment, is that it?

A. That is probably it.

THE COURT:

Well, now, what do you want to show by all this?

MR. SIMONS:

Well, now, just one more question—

BY MR. SIMONS:

Q. That property is assessed for approximately three hundred and eighty-five thousand dollars; is that right?

A. I have no idea what the assessed valuation is.

MR. SIMONS:

Well, I simply want to show the same as the question of the plant, this is merely a book value—

THE COURT:

All right.

MR. SIMONS:

—of anticipated possible contingencies, without being a proper charge that should be chargeable to us.

THE COURT:

All right.

MR. SIMONS:

And I, therefore, ask for that reason that it be stricken from the record.

THE COURT:

Motion denied.

BY MR. SIMONS:

Q. Insurance, $3,186.15.

A. That is fire insurance and—well, various insurance policies which they carry. I can't enumerate them all, but the usual type.

MR. SIMONS:

What is your thought on that, if Your Honor please, on the matter of insurance?

THE COURT:

All right; I think it is all right.

MR. SIMONS:

I didn't get what you said.

THE COURT:

Mr. Hirsch has persuaded me, or, rather, convinced me that it is a proper charge. I think he is right about it. I didn't think so at first, but I think now that it is.

MR. SIMONS:

Well, I want to check the policies.

BY MR. SIMONS:

Q. Do you have a record of your insurance here?

A. I don't believe so.

Q. Do you have any way of telling us how you arrived at the figure of $3,186.00?

A. Yes, I can give you that.

Q. Do you have your 1937 statement?

A. Yes, sir, I think it is with that.

Q. This is the one you were reading from before, is it not?

A. Yes.

THE COURT:

Well, I think we can recess for lunch until two o'clock.

(Recess, 12:30 until 2 o'clock P. M.)

END OF VOLUME II

142

Vol. III

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1939

No. 638

APEX HOSIERY COMPANY, PETITIONER,

vs.

WILLIAM LEADER AND AMERICAN FEDERATION OF FULL FASHIONED HOSIERY WORKERS, PHILADELPHIA, BRANCH No. 1, LOCAL No. 706

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED JANUARY 12, 1940.

CERTIORARI GRANTED FEBRUARY 26, 1940.

INDEX

Volume I

	PAGE
Docket Entries	2
Plaintiff's Second Amended Complaint (Filed Sept. 19, 1938)	8
Affidavit of Defense of William Leader (Filed Oct. 27, 1938)	23
Affidavit of Defense of American Federation of Full Fashioned Hosiery Workers, Philadelphia Branch, No. 1, Local No. 706 (Filed Oct. 27, 1938)	36
Testimony (Filed April 18, 1939)	51

Plaintiff's Evidence

(Hearing Held March 13, 1939)

	DI.	CR.	RE-D.	RE-C.
Ulysses G. Brown Called on Cross Examination				68
Jack L. Milestone	78	82	84	86
Fritz Wienhold	88	91		
Joseph Friedland	93	95	97	
William Meyer	100	160	176	

(Hearing Held March 14, 1939)

	DI.	CR.	RE-D.	RE-C.
Kathryn Bradley	177			
Mildred Elsner	189	196		
Paul Bergmeister	197	200	201	
William Goble	202	203		
Marguerite Rupp	211	217		
Helen Dorwart	220	230		
Earl Stout	239			
F. Elwood Struve	247	277		
John Hartung	295	299		
Joseph Smith	303	308		
Herbert Hahn	311			
Frederick W. Koelle	318			
Leo O'Driscoll Called on Cross Examination			327,	355
Harry Oehmig Sworn				355
Harry Oehmig Called on Cross Examination				357

(Hearing Held March 15, 1939)

Harry Oehmig Called on Cross Examination				365
Joseph Patrick Burge Called on Cross Examination				402
J. Allen Harper	405	462		
Milton S. Steeple	472			

Volume II

(Hearing Held March 15, 1939 Cont.)

J. Allen Harper			496	
Milton S. Steeple	499	547		

(Hearing Held March 16, 1939)

	DI.	CR.	RE-D.	RE-C.
Milton S. Steeple			585	587
William Leader Called on Cross Examination				607
Sylvan Hirsch	618	622		

DEFENDANTS' EVIDENCE

William Leader	629	666		

(Hearing Held March 17, 1939)

William Leader		694		
Myles Higgins	738	746	753	754
William F. Etter	755	783	811	818
Edwin Morris	820	823	824	
Frederick S. Weber	824	825	826	828
			829	830
Richard Doyle	830			

(Hearing Held March 20, 1939)

William Meyer Called on Cross Examination	842

PLAINTIFF'S EVIDENCE IN REBUTTAL

Ulysses G. Brown Called on Cross Examination				849
Mildred Kelly	876	884		
J. Allen Harper	886			
William Meyer	889	891	892	

DEFENDANTS' EVIDENCE SURREBUTTAL

	DI.	CR.	RE-D.	RE-C.
Elsie Rau	894	904		

(Hearing Held March 21, 1939)

(Hearing Held March 29, 1939)

PLAINTIFF'S EVIDENCE (Continued)

Earl Constantine	924			
Joseph C. Langer	928	930		
	940	969		
	970	978		

Volume III

(Hearing Held March 29, 1939 Cont.)

Joseph C. Langer		1018		

(Hearing Held March 30, 1939)

Joseph C. Langer	1129	1114		
	1133	1131		
	1138	1135		
	1149	1144		
		1163		
Milton S. Steeple			1151	1152
William Meyer	1181		1145	1147

PLAINTIFF'S EVIDENCE IN REBUTTAL (Continued)

William Meyer	1203	1209	1242	1245
Milton S. Steeple			1270	1274
Joseph C. Langer			1270	

	DI.	CR.	RE-D.	RE-C.
F. Elwood Struve		1265		
(Hearing Held March 31, 1939)				
PLAINTIFF'S EVIDENCE (Continued)				
Milton S. Steeple		1282	1285	
		1296	1298	
		1300		
Motion for Directed Verdict for Defendants			1305	
(Hearing Held April 3, 1939)				
Charge of the Court			1312	
Motion for Directed Verdict for Defendants			1348	
Defendants' Points for Charge			1350	
Plaintiff's Calculation of Losses for which Claim Is Made in this Suit			1358	
Verdict			1367	
Judgment			1368	
Motion To Set Aside Verdict and Judgment Against William Leader and American Federation of Hosiery Workers, Branch No. 1, Local 706			1369	
Motion and Reasons for New Trial			1370	
Opinion Sur Motion To Set Aside the Verdict and Judgment and Motion for New Trial			1389	
Order Dismissing Motions To Set Aside the Verdict and Judgment and To Grant a New Trial			1392	
Notice of Appeal			1393	
Designation of Matter To Be Included in Record on Appeal			1395	
Certificate of Clerk			1397	

Exhibits

PAGE

Exhibit P-1, Copy of letter dated March 4, 1937, from William Leader, President, Full Fashioned Hosiery Workers Local 706, Branch No. 1, to the Brooks and Anderson Hosiery Company 120

Exhibit P-2, Photograph (Physical Exhibit) 131

Exhibit P-3, Photograph (Physical Exhibit) 132

Exhibit P-4, Photograph (Physical Exhibit) 132

Exhibit P-5, Photograph (Physical Exhibit) 132

Exhibit P-6, Photograph (Physical Exhibit) 134

Exhibit P-7, Photograph (Physical Exhibit) 136

Exhibit P-8, Photograph (Physical Exhibit) 215

Exhibit P-9, Card entitled "Pledge Card, American Federation of Hosiery Workers, Branch No. 1" 229

Exhibit P-10-a to P-10-u, Photostatic copies of vouchers of the Full Fashioned Hosiery Workers Union of Philadelphia and Vicinity 339-354

Exhibit P-11-a to P-11-q, Copies of The Hosiery Worker 373-400

Exhibit P-12, Summary of damage to leggers and footers on June 19th, 1937, compiled by Mr. Harper 422

Exhibit P-13, Handwritten memoranda of Mr. Harper relating to damages found on various dates during the sit-down strike 442

Exhibit P-14, Photostatic copies of memoranda made by Mr. Harper relating to damages noted to machines on June 23rd, 1937 445

PAGE

Exhibit P-15, Box containing blackjacks, brass knuckles, pipes, etc. (Physical Exhibit) 459

Exhibit P-18, Depositions of Thomas Flynn, Harry Bach, Paul Walton, John Bernhardt, Herbert S. Fahy, Raymond Hallstein, Louis Kenworthy, Peter Kremer, David E. Justice, Herman Freiheit, Edward Kozubel, Carl Kuebler, Paul Lang, Harry Edward Jones, Sesto Lucarini, William Anderson, Martin Pirozek, Howard Carpenter, Francis McDermott, Ernest Del Prete, Alfred Schuch, Louis Drigert, Jake Schulberger, Raymond Evans, Elmer Miller, John Ezzo, William Pawlick, George Flynn, Robert Pawlowski, George Hober, Valentine Razler, Milton Innitski, Walter Razler, Joseph Ryan and William Etter (Physical Exhibit) 606

Exhibit P-19, Circular entitled "Attention—Hosiery Workers", signed by William M. Leader, president 693, 856

Exhibit P-20, Photostatic copy of bill dated May 7th, 1937, from Weil's Curiosity Shop to Full Fashioned Hosiery Workers Union, Philadelphia, Pa. 694, 872

Exhibit P-22, Excerpt from minutes of the regular membership meeting of Branch 1 of September 11, 1937 (Physical Exhibit) 704, 1308

Exhibit P-23, Letter dated May 21, 1937, on the letterhead of the Full Fashioned Hosiery Workers Union of Philadelphia and vicinity 715

Exhibit P-24, Letter dated June 24, 1937, on the letterhead of the Full Fashioned Ho-

PAGE

siery Workers Union of Philadelphia and Vicinity 716, 881

Exhibit P-25, Postal card dated May 21, 1937, from William Leader, addressed to William Meyer, Jr. 820, 883

Exhibit P-26, Letter dated July 29, 1937, from American Federation of Hosiery Workers, Branch No. 1, Local No. 706, to Apex Hosiery Company 875

Exhibit P-27, Report of the Master dated March 28, 1938 921

Exhibit P-28, Statement entitled "Shipments of Women's Full-Fashioned Hosiery 1934-1938 inclusive" prepared by Statistical Department, National Association of Hosiery Manufacturers, Inc. 1261

Exhibit P-29, List of Orders Received August 1, to December 31, 1937 1281

Exhibit D-1, Shop Rules of the Apex Hosiery Co. 279

Exhibit D-9, Letter dated June 28, 1937, from William Leader, President, "Attention All Shop Chairman" 896, 899

Exhibit D-10, Chart on page 18 of brief on behalf of the Full Fashioned Hosiery Manufacturers of America Inc., in a proceeding before a Wage Rate Tribunal in the matter of Full-Fashioned Hosiery Manufacturers of America, Inc., and American Federation of Full-Fashioned Hosiery Workers 1221, 1247

Exhibit D-11, Excerpt from the December 29, 1937, issue of the Special News Letter of the National Association of Hosiery Manufacturers 1264

	Original	Print
Proceedings in U. S. C. C. A., Third Circuit	1398	1398
Order of submission	1398	1398
Opinion, Biggs, J.	1399	1398
Judgment	1400	1414
Petition for rehearing (omitted in printing)	1401	1415
Order denying petition for rehearing	1402	1415
Clerk's certificates (omitted in printing)	1403	
Order allowing certiorari	1404	1416

VOLUME III

In The

DISTRICT COURT OF THE UNITED STATES

For the Eastern District of Pennsylvania

No. 19950. March Term, 1937.

APEX HOSIERY COMPANY

vs.

WILLIAM LEADER, President of American Federation of Full Fashioned Hosiery Workers (Sometimes known as American Federation of Hosiery Workers), Phila. Branch No. 1, Local No. 706, an unincorporated association, and individually, Joseph Burge, Vice President of said association, and indivdually, Harry Omeig, Treasurer of said association, and individually, Huey Brown, Secretary of said association, and individually, The American Federation of Full Fashioned Hosiery Workers, (sometimes known as American Federation of Hosiery Workers), Philadelphia Branch No. 1, Local No. 706, an unincorporated association, on behalf of itself and all the members thereof.

Sylvan H. Hirsch, Esq.,
Arno P. Mowitz, Esq.,
Harry G. Sundheim, Esq.,
For Plaintiff.

M. Herbert Syme, Esq.,
For Defendants.

After Recess

Present: Counsel as before noted

JOSEPH C. LANGER, recalled.

Cross Examination (Continued)

THE COURT:

Very well, gentlemen.

BY MR. SIMONS:

Q. Mr. Langer, we were discussing the question of insurance which you have charged up at $3,186.15. Now, can you tell us the component parts of that insurance?

A. Yes, I will explain how that is done. We take at the beginning of the year—rather, at the end of the year, figure out the prepaid insurance of the respective policies. We do that—

BY THE COURT:

Q. Is that the fire insurance?

A. Yes, fire and—I can tell you, fire and other—that is fire insurance, boiler liability, mercantile burglary, auto truck, pay-roll hold-up, elevator, safe burglary, transportation, parcel post, position policy, employer's liability, and mercantile burglary open stock.

BY MR. SIMONS:

Q. Now, can you give the amount that you have—well, pardon me, you take the prepaid item and add to that—

A. Add the expenses during the year, and then take the prepaid at the end of the year, and the difference is the amount charged to operations.

Q. Now, can you tell us whether or not there had been any change in rate from the figures that you had in 1936 and those in 1937, policy figures?

A. No, I couldn't—

Q. The rate is the same?

A. I presume they are about the same.

Q. Do you have a record anywheres that will give us the different insurance charges to the various items—

A. I can tell you how much the premium is on these respective policies.

Q. All right, can you do that?

A. Yes.

Q. Do you have it there?

A. I have it here.

Q. May I see it?

A. Yes.

(The witness produced the record.)

BY MR. SIMONS:

Q. Do you have the policies?

A. Do we have the policies here? No.

MR. HIRSCH:

They can be produced if Your Honor thinks it is relevant.

BY MR. SIMONS:

Q. Well, you have here building and contents. I don't know how much of that is building and how much of that is contents. Now, your building and contents premium is for—

A. That is a deposit premium.

Q. You have no other charge for it?

A. No.

Q. What is that $16,450.00?

A. That is the deposit premium.

Q. For what period of time?

A. Well, that is perpetual, that is, it is adjusted each year.

Q. In other words, you paid $16,450.00 for fire insurance on a perpetual policy?

A. Well, it is on the factory mutuals, which covers the deposit premium, and each year it is adjusted, based on the losses sustained during the year, and the earnings—

Q. In other words, you mean if you have a fire loss they charge off a certain amount of insurance that you carry, and you pay for the difference?

A. Well, I don't know exactly how they work, only I know that is the basis, they make a deposit premium and each year it is adjusted, and you have that amount on deposit.

Q. Do you have an idea as to what the adjustment is on that fire insurance premium, or is that worked as the regular perpetual policies, that you can surrender any time and get ninety per cent of the amount that you have paid in?

A. I don't know what their value of the policies would be if you surrendered the policy, but the amount we show there prepaid is the amount confirmed to us each year by the company as being the value of the deposit premium as of that particular date.

Q. Well, do you have any record that shows how much you actually paid out in one year for fire insurance on that building?

A. The records would show, the books would

show. There is supposed to be a bill in every year from these people to show how much that additional premium was.

Q. Let me ask you this, did you base your figure that you gave us on the sixteen thousand dollar premium, sixteen thousand, four hundred and fifty dollar premium—

A. Our figures are based upon the value of that policy at the beginning of the year and the value now and the—

Q. No, you don't get what I am asking. When you computed the value of the insurance for the period of May 6th to August 19th—

A. Yes.

Q. —did you use the basis—the premium of sixteen thousand, four hundred and fifty dollars—

A. No, sir.

Q. —in computing that figure? What did you use?

A. Took it for the entire year and apportioned the total expense for the year, which came to $7,611.09.

Q. Naturally, you only based it on part of the year.

A. Yes, sir.

Q. Based on the $16,450.00 premium that you have charged here for the year.

A. Yes, but that had a balance similar to that at the beginning of the year, there was a sixteen thousand dollar balance at the beginning of the year.

Q. Let's get this straight. This $16,450.00 premium you have marked down here August 1st, 1937.

A. That is the policy year, but that wasn't paid that year,—

Q. Wait a second, that is the time that the policy comes in. Now, that policy will run until 1938.

MR. HIRSCH:

Let him answer, Mr. Simons.

A. No, I told you that it is a perpetual policy. That is the policy year, but it is a perpetual policy. They pay sixteen thousand dollars as a deposit premium.

Q. When?

A. At the time that the contract was entered into, several years ago.

Q. All right, and what have they paid every year since that time?

A. That is varying amounts.

Q. Can you let me know what that amount is?

A. I don't know, let's see—Mr. Steeple, do you have the voucher register here?

There are various charges in that prepaid insurance account, but they aren't itemized as of what particular company. However, that could be obtained. If you would want that information we can get it.

Q. Well, now, you take your year 1937. You start off with a charge, a debit, which is prepaid insurance, which means that you paid for that insurance to cover a period in the future?

A. That is right.

Q. And, therefore, as of January 1, 1937 you had prepaid for insurance coverage during part of that year?

A. Now, wait, might I state that that amount there represents two factors? It represents the present value of the—of the fire insurance, the present

value of the deposit premium, and the unexpired premium on other policies.

Q. Well, this is your entire insurance account?

A. That is right.

Q. Now, do you have any other account besides prepaid insurance?

A. No, sir.

Q. You carry no current account, you just use your prepaid insurance account as your regular expense account?

A. That is right.

Q. Now, during the course of the year, at the end of that year—well, let's take at the end of July 31st—you don't have any entry here for August—at the end of July 31st that figure was increased to $25,025.65.

THE COURT:

What is the total amount of the insurance that you are claiming for?

MR. SIMONS:

Three thousand dollars.

THE WITNESS:

$3,186.15.

BY MR. SIMONS:

Q. Do you have any idea of what these additional charges of some twenty-seven hundred dollars were for?

A. I couldn't tell what the individual items are unless we had the supporting records to show that. I mean, the amounts are totaled for each month.

Q. Well, now, you have an entry here, July 31st, transferred to strike expense, $1,609.67. Does that

have anything to do with this figure of three thousand dollars?

A. No, if it is eliminated from the account it did not.

Q. Up here (indicating)?

A. No, that was eliminated.

BY MR. HIRSCH:

Q. Keep your voice up. That was eliminated?

A. That was eliminated.

BY MR. SIMONS:

Q. Now, what do you mean when you say eliminated?

THE COURT:

You mean it doesn't go in the item of $3,186.15.

BY MR. SIMONS:

Q. Well, was that chargeable to anything else?

A. It was charged in, it was charged in to the strike expense account that we had there, which I believe Mr. Ladenheim examined when he was in the office.

Q. Well, that is not the question, whether he examined it. What is that?

A. I don't know—

Q. To what is that chargeable?

A. From the records here, it has been charged to strike expense. I don't know offhand what it is.

Q. Aren't all of these items charged to strike expense?

A. No, sir.

Q. Or expense during the period of the strike?

A. Yes, but not specifically charged to strike ex-

pense. They are ordinary expense incurred during that period.

Q. In other words, you want us to understand that in addition to the three thousand dollars insurance that you are charging us now in this particular item, you have also charged an item of $1,609.67 to strike expense?

A. No, sir, because the strike expense account was eliminated from all our calculations. There was an item of sixteen thousand dollars, I believe, for strike expense, which we eliminated entirely, as not being an item for expense incident to hosiery operations.

Q. Well, now, when you closed the books at the end of the year you charged off to profit and loss $7,611.09 from your insurance?

A. That is correct.

Q. That is correct, and here for a period of at the most fifteen weeks, you are charging—

A. That is correct.

Q. —$3,186.15?

A. That is correct.

Q. That is correct?

A. That is correct.

Q. In other words, you are telling us now that you are charging us approximately fifty per cent of the insurance during this fifteen-week period as against what you have charged off on your regular books and accounts for the full year?

A. That is right, that is correct, because that portion of the insurance applied to that period, the best we could determine.

Q. In other words, you are telling me now from an accounting point of view as a certified accountant—

A. Yes, sir.

Q. —that allocating insurance for fifteen weeks is going to be a larger amount—will be more than fifty per cent, or approximately fifty per cent of what you would allocate for the full year?

A. Yes, because there is certain expenses in that period there that were properly applicable to that period.

Q. Well, now, if you have fire insurance your fire insurance goes on for a period of twelve months?

A. That is true.

Q. And there is a proportionate charge for each part of the twelve months?

A. That is correct.

Q. So, therefore, that should be proportionate to the amount you charge off for the full year?

A. No, but there are other items in there—

Q. What other items—

MR. HIRSCH:

Now, let him answer, please.

MR. SIMONS:

All right.

BY MR. SIMONS:

Q. What other items are there?

(Discussion at side bar.)

BY MR. SIMONS:

Q. While you are looking, your books show that during 1936 you charged off to profit and loss $5,752.04 as the insurance for the complete year?

A. What year is that, 1936?

Q. '36.

A. That is probably right.

Q. During 1935 you charged off $2,664.14 for insurance for the complete year, that is correct?

A. How much do you have for 1935?

Q. $2,664.14.

A. Yes.

Q. That is correct?

A. Yes.

Q. That is for the full year of 1935, that is your insurance expense?

A. Yes, but then in the corresponding 1934 we had an item of $7,199.16, so it has fluctuated at times.

Q. Oh, yes, yes, as a matter of fact, according to the books, it is $7,246.50?

A. That is right.

Q. Well, how about that—

A. I can't locate the analysis, the papers on which we made the allocation, but that was an allocation that was made to the best of our knowledge from the information at that time.

MR. SIMONS:

If Your Honor please, I don't believe that that figure has been properly substantiated, and I at this time move to strike it out.

THE COURT:

It really doesn't seem to me that it is, gentlemen. I just don't follow all this. He made allocations according to accounting practice, but we can't tell what it was and on what basis, and he is not able to give us that information, and I think we might as well strike out that item.

MR. HIRSCH:

Well, if Your Honor please, he gives the information that it was made based on whatever information he had, records, at the time, that he considered it a proper allocation.

THE COURT:

I know, but—

MR. HIRSCH:

That is not an item that should be stricken. It is just simply a question of whether it should be accepted or not, and I think the question of acceptance is for the jury. Here is a man who says that he made this allocation based on the records he had and the information he had and that it was proper at the time. Now, if he is to be believed it is to be accepted. I don't think that is any basis for striking.

THE COURT:

Well, of course, some of it is proper and some is not, or some may not be, and we can't tell.

MR. HIRSCH:

Let's put it this way, that in order to cut the Gordian knot, there seems to be a charge-off to profit and loss of some seven thousand for that year.

BY MR. HIRSCH:

Q. Is that right?

A. That is correct?

MR. HIRSCH:

And I will agree that it should be proportioned on the basis of fifteen fifty-seconds.

MR. SIMONS:

Your Honor, that is not the point involved in this matter,—

MR. HIRSCH:

I have no objection to that.

MR. SIMONS:

—that we are trying to compromise a claim. There has been a claim presented here. There are other claims of a similar nature. If those claims cannot be substantiated I don't think they should be allowed.

MR. HIRSCH:

I withdraw my offer and I stick to the claim.

MR. SIMONS:

I ask Your Honor to strike it out. You can see it is entirely disproportionate to the amount for the full year.

THE COURT:

What was the amount charged for the full year?

MR. SIMONS:

$7,611.09.

THE COURT:

All right, I will allow fifteen fifty-seconds of that amount.

BY THE COURT:

Q. How much is it? What is the total?

A. $7,611.09.

THE COURT:

You figure out fifteen fifty-seconds.

MR. SIMONS:

Now, if Your Honor please, may I just say this, that this covers every type of insurance. Now, there is other insurance he has charged through here for which I certainly don't think we are responsible.

THE COURT:

Why not, if they are all parts of the business?

MR. SIMONS:

Wait, he has workmen's compensation charged through here. He has public liability charged through here.

THE COURT:

He had to keep it up, didn't he?

MR. SIMONS:

Oh, no, that is on a pay-roll basis.

THE COURT:

Well, that is true.

MR. HIRSCH:

If we didn't pay it we couldn't charge it.

MR. SIMONS:

Well, I don't know. I will have to check that.

MR. HIRSCH:

Ask him.

BY MR. SIMONS:

Q. What other items—

A. There is nothing in here that we didn't pay.

Q. Don't answer generally. Let me see your distribution of that insurance item. What other items did you consider?

(The witness showed the records to Mr. Simons.)

BY MR. SIMONS:

Q. Where did you get the total of three thousand?

A. What do you mean?

Q. The question is, how do you make up your three thousand dollars? This is just an anlysis here, insurance as of December 31, 1937, and doesn't indicate anything about the thirty-one hundred dollar charge.

A. Seventy-six hundred dollars is charged for the year.

Q. That is your profit and loss statement and your work sheets for December 31, 1937?

A. That is correct.

Q. Now, where are your work sheets or where are your papers to show the analysis of the thirty-one hundred dollar item that you are claiming?

A. That is what I am looking for. I can't locate it at the present time.

MR. HIRSCH:

If Your Honor please, you have already ruled this out and have reduced the sum, and he still is—

MR. LADENHEIM:

Who has reduced the sum?

MR. HIRSCH:

The Judge has. The Court has reduced it to fifteen fifty-seconds of the amount.

MR. SIMONS:

I still say, if Your Honor please, we don't

have to be chargeable for workmen's compensation insurance.

THE COURT:

No,—

MR. HIRSCH:

I don't want to object to that if he wants to examine on that.

THE COURT:

Of course, it is almost de minimis, but if the witness can't tell us how he arrived at this figure I don't think we ought to consider any of it, in view of the fact there are undoubtedly some items that should not be charged to it at all. Workmen's compensation is one of them. That is very true.

MR. SIMONS:

Pay-roll robbery insurance that he mentioned.

MR. HIRSCH:

If we didn't lay it out, of course, we couldn't charge. If we had to pay premiums for workmen's compensation during that period it is chargeable.

THE COURT:

I know, but this witness doesn't know, he can't tell.

MR. HIRSCH:

He can tell by looking at the records.

THE COURT:

He says he can't.

THE WITNESS:

That ledger merely shows monthly totals, sir.

BY MR. HIRSCH:

Q. Has that ledger been proved and the totals proved—

A. Absolutely.

Q. —in your audit?

A. Yes.

Q. You examined all the cash disbursements?

A. We have actually vouched all the charges made to that account.

Q. And are you satisfied that that charge was actually incurred and paid for?

A. Actually incurred, yes, sir.

MR. HIRSCH:

I think that is sufficient, sir.

MR. SIMONS:

If Your Honor please, I don't think that is the question at all, as to whether they paid for it or whether it was charged to them and they didn't pay for it. There is no doubt if their records show it was paid, undoubtedly it must have been paid, but that doesn't say we are responsible for it, because they did or did not pay that item. There has not been a proper analysis of this account and I don't think we should be chargeable, and we can't disprove it in any way. You have put the onus of disproving these figures on me, and I can't do it. Therefore, Your Honor, I move again that that entire figure be stricken from the record.

THE COURT:
Well, I will deny the motion.

MR. SIMONS:
Will Your Honor note on there we have no analysis of any of the items making up the insurance?

THE COURT:
Yes.

MR. HIRSCH:
Well, subject to correction, the fifteen fifty-seconds of $7,611.09 is $731.70.

THE COURT:
How much?

MR. HIRSCH:
$731.70.

THE COURT.
Fifteen fifty-seconds of what?

MR. HIRSCH:
No, I must be wrong.

THE COURT:
Oh, I should say you are.

MR. HIRSCH:
I will stick to my law and stop accounting.

(Discussion off the record.)

MR. HIRSCH:
$2,195.10.

THE COURT:
All right, $2,195.

MR. HIRSCH:

. $2,195.10, and that will have to be subject to check.

(Discussion off the record.)

MR. SIMONS:

May I ask Your Honor to note the various types of insurance that are being charged in this account, so we don't have to come back to this: building and contents, use and occupancy—and some rider to that use and occupancy, I don't know what it is, there is no notation—boiler liability, mercantile burglary open stock, auto trucks, public liability, property damage, fire and theft on the truck, payroll hold-up, elevator insurance, safe burglary, transportation insurance, parcel post insurance,—position?

THE WITNESS:

Position policy, yes. That is the bond.

BY MR. SIMONS:

Q. You mean fidelity bonds?

A. That is right.

Q. For the employees?

A. Yes, sir.

MR. SIMONS:

Employer's liability.

BY MR. SIMONS:

Q. Is that for merchandise sold, in other words, in case there is any injury resulting from, possibly, dies, or imperfections?

A. I am not certain, offhand,—

MR. HIRSCH:
No.

A. —just what the policy is.

MR. STEEPLE:
It is for outside, anyone hurt on the pavement, or anything of that sort.

MR. SIMONS:
Public liability?

MR. STEEPLE:
Yes.

MR. SIMONS:
Another mercantile burglary policy, open stock, for New York, New York sales office, workmen's compensation insurance.

MR. HIRSCH:
What was the original amount of that item?

THE WITNESS:
The original amount?

MR. SIMONS:
$3,186.15.

BY MR. SIMONS:

Q. Do you have an analysis of heat, light and power, that you have charged through at $3,084.46?

A. No, I am not sure, but I believe that is just the proportionate share for the period based on the total amount expended for the year of $28,974.52.

Q. In other words, let me see your statement for 1937.

(The witness produced a paper.)

BY MR. SIMONS:

Q. You took your heat, light and power over the period for the year 1937, which figure was $28,974.52?

A. That is correct.

Q. And you apportioned that amount for the period of May 6th to August 19th, is that right?

A. That is correct.

Q. Now, of course, during the months of May, June, July and August it is not necessary to have any heat, is that right?

A. That is correct.

Q. Do you have an idea as to what your heat bill is a year? Let me see your statement ending June 30th.

THE COURT:

What is the heat, light and power item?

MR. SIMONS:

$3,084.46.

THE COURT:

Well, now, under what theory could you be entitled to claim for the proportionate share of the heat bill, for instance, during the summer months? There isn't any theory, is there?

MR. HIRSCH:

I think if he will break that item down and determine how much of that represents heat that that—

THE COURT:

Well, he says he hasn't done it.

THE WITNESS:
Yes, I have.

MR. HIRSCH:
I think, Your Honor is correct.

MR. SIMONS:
How about the light?

MR. HIRSCH:
Light was being run throughout the time by the sit-downers. We are not going to pay for that if we can help it.

MR. SIMONS:
All right, let's get the heat straightened out, first.

BY MR. SIMONS:
Q. Do you keep a separate account for heat?
A. Yes.
Q. In your ledger?
A. We have a separate account, yes. I have a breakdown as to the different items in there.
Q. What would that be, under "Heat"?
A. Here it is (indicating).
Q. Let's see it in here. Well, you have just one account—
A. Yes.
Q. —in your ledger?
A. Right.
Q. Heat, light and power?
A. That is correct.
Q. Now, do you have a breakdown of that account?
A. Yes, I have how much fuel oil and how much electric. What is the total in the account?

The total charge for heat and light for the year 1937 was $36,043.87, and through a method of internal accounting we charged $7,069.35 of that amount to the dye house, leaving a balance in the account of $28,974.52.

BY MR. HIRSCH:

Q. How much of that was light?

A. And of that, electric, I have here, is $19,945.12, and fuel oil, $9,029.40.

BY MR. SIMONS:

Q. What is this item of forty per cent and five per cent?

A. That is to the dye house, which is this amount we take out of there, eliminate, and charge to the dye house.

Q. How about your power?

A. Well, the power is in the electric bill.

BY THE COURT:

Q. Now, then, you have fuel oil of nine thousand dollars. That is what you spent for the whole year?

A. That is correct.

Q. And how much of that did you put in this item of $3,084.46?

A. The best I can see, Your Honor, is that we took the total for the year there and made this split, I mean, didn't allocate between the fuel oil and electric, but took the total for the year and applied that total to the portion for that period.

THE COURT:

Well, you see, you can't do that.

BY MR. HIRSCH:

Q. Well, what is the ratio of electric to fuel oil in this total? Is it the ratio of $19,945 to $9,029?

A. That is correct.

Q. Why don't you take that ratio, then, of $3,084.46?

MR. SIMONS:

Wait a second, who is testifying here? I mean, you have got an expert on the stand for all of this. Are you suggesting a new method—

MR. HIRSCH:

No,—

MR. SIMONS:

—of allocating these items?

MR. HIRSCH:

—I am suggesting a method of determining how much was used for heat, which the Judge wants to know.

THE COURT:

Yes, you see, there are certain items that are susceptible of just being apportioned over the whole year. I don't think heat is one of them.

MR. SIMONS:

I don't think light is.

THE COURT:

That may or may not be.

MR. HIRSCH:

Well, it is a matter of use.

BY MR. HIRSCH:

Q. You have bills from the Philadelphia Electric Company?

A. Yes.

Q. Do you have those bills in court?

A. I don't believe they are in court.

Q. When you talk about your fuel and the power, that operates your motors and your machinery—

THE COURT:

Well, gentlemen, I am going to strike out that item of light, heat and power unless you can establish how much was spent during the period of shut-down for those items.

MR. HIRSCH:

We will establish it.

THE COURT:

As presently proved I will strike that out.

MR. HIRSCH:

All right, I will establish it definitely.

BY MR. SIMONS:

Q. What is your general factory expense, $83.32?

A. General factory expense, is it?

Q. Yes.

A. We have an item of—

THE COURT:

Would you eliminate that, to save time?

MR. HIRSCH:

Gladly.

THE COURT:

It is eighty-three dollars.

MR. HIRSCH:

Gladly.

THE COURT:

That is withdrawn, whatever it is, right or wrong.

BY MR. SIMONS:

Q. Now, you have another item here of—if I can read—boarding form rental and expense.

A. Yes.

Q. $1,913.52. What is that for?

A. That is a specific charge made by the Paramount Machine Works, representing a rental on all boarding forms which the company has in their plant on a rental basis. That rental goes on irrespective of whether the plant is operating or not.

Q. Well, do you have a contract with them for that?

A. I can't answer whether you have a contract, but I know there are specific bills in there which specifically state or show the monthly charge which was prevalent during that entire time.

Q. Well, do you know whether or not there is a lease or a contract of some kind to cover that item?

A. If there is, I haven't seen it.

Q. Did you ever see it?

A. No, sir, not to my knowledge.

Q. Did you ever check it?

A. No, sir.

Q. You mean in your audit you merely took the word of the bookkeeper who put down that item?

A. No, sir, we took it from invoices rendered by the Paramount Machine Works.

Q. You didn't take those invoices and see whether the invoices were correct?

A. They were approved by the management.

Q. And you took that as being satisfactory evidence of being a proper charge?

A. Yes, sir.

THE COURT:

I think that is sufficient. I will overrule your objection to that item. Go ahead.

MR. SIMONS:

I would like to see those contracts, if Your Honor please. I don't think that is proper accounting practice.

MR. HIRSCH:

I think it is most proper.

THE COURT:

I think it is all right.

MR. SIMONS:

I must disagree with you, because I think matters of that kind have to be checked with leases.

THE COURT:

All right, I will rule it is all right, subject to your production of the lease and checking of it later.

MR. HIRSCH:

If we have a lease I will gladly produce it. Do we have a lease?

MR. STEEPLE:
We have a lease.

MR. HIRSCH:
Here?

MR. STEEPLE:
Not here.

MR. HIRSCH:
It will be produced.

THE COURT:
All right.

BY MR. SIMONS:
Q. Do you have a record of that on your books?
A. Of what?
Q. That particular item.
A. Boarding form, yes, there is an account called boarding form rental and expense.
Q. Where is it on here?

(The witness indicated the account.)

THE WITNESS:
It is in that outside wages account.

Q. What is that?
A. It is in the outside wages account. Here you are (indicating).
Q. This is your analysis for the year 1937 of what you call "Outside wages account." Now, in your ledger there is no notation as to what this outside wage account represents, but in your analysis you have it as "boarding form."
That is the Universal Dye Works?
A. That is for boarding. That is an item of boarding.

Q. Now, you note here in May of 1937, in May of 1937 you have Universal Dye Works, boarding, $60.05. Correct?

A. That is correct.

Q. In April you have $590.20?

A. That is correct.

Q. Then you come down until August?

A. Yes, sir.

Q. And in August you have $48.56?

A. That is correct.

Q. Now, there is no charge here for June and July at all, and in August there is only $48.56, and that is Basal—what was Basal hosiery?

A. No, that has nothing to do—that is another item.

Q. Therefore, August doesn't count at all.

A. Yes, but there is a charge in here, then, in September, $1,144.40, and I believe that covers—

Q. Well, now, don't believe; do you know whether it does or does not?

A. Offhand I couldn't say, here, but I could get the invoices and prove that item, but I know that there has been a charge every month, all the way through.

Q. When you say you know, you don't have a charge in your analysis here for anything during that month?

A. Not in that month, no.

Q. During May, June, July or August?

A. That is correct, but there is an item appearing in September which will cover that period.

Q. You mean to say that this nineteen hundred dollars is represented in the total of $1,144.40 that appears in September?

A. Well, I couldn't say that offhand.

Q. Well, you know that that is a practical impossibility. You can't get nineteen hundred dollars out of eleven hundred dollars.

A. That is—

Q. Now, what you have done is merely take the total figure for the year and apportioned a certain percentage to that period from May—May 6th until August 19th?

A. That is possible. I couldn't say offhand.

Q. What is that?

A. That is possible. I couldn't say.

Q. That is possible. Well, your records indicate that there is no charge during those months?

A. That is correct.

MR. SIMONS:

If Your Honor please, I ask that that be stricken from the record.

THE COURT:

Well, no, that is a different thing. If your leases show—

MR. SIMONS:

Well, the records don't show it. The records show there is no charge during that time. In September—

THE COURT:

I know, but suppose he has it for the year, the entire rental, payable in November.

MR. SIMONS:

It isn't on a rental basis, it is on a dozen production basis.

THE COURT:

I don't know.

THE WITNESS:

No, sir, it is so much per form.

MR. HIRSCH:

We will produce the lease form and everything else about it.

MR. SIMONS:

If Your Honor please, the records as they stand now, an analysis made by their own accountant—

THE COURT:

I will strike it out until the lease—

MR. HIRSCH:

You will permit us to produce the information on it?

THE COURT:

Yes.

BY MR. SIMONS:

Q. You have an item of freight and express, $97.43. What does that amount to?

THE COURT:

Do you want to bother with that?

MR. HIRSCH:

How much?

THE COURT:

$97.43.

MR. HIRSCH:

Now, go ahead. I don't even know what it is. What was it for?

MR. SIMONS:

Freight and express.

MR. HIRSCH:

All right; out.

BY MR. SIMONS:

Q. You have shipping wages of $525.00. Do you have that analysis here, to whom it was paid and when it was paid?

A. The pay-roll records are all here, and we could establish who that was paid to.

Q. Can you establish that? We haven't checked the other factory supervision as yet.

A. Well,—

Q. Get the shipping wages. May I just note that you are referring in all of these matters to your annual statement prepared in December 31, 1937?

A. That is correct.

Q. You are not referring now to any analysis that you have made for the period May 6th to August 19th, 1937?

A. Not as such, but as part of our audit for the end of the year.

Q. All right.

MR. HIRSCH:

I would like Your Honor to consider at this time, and allow me to renew my position again of proving through this witness the actual loss sustained by this company, instead of the profit that it would have made, and therefore we

would ask under that proof for the difference between what we would have made and what we actually lost. By so doing we would take the entire year period and avoid all necessity for allocation, and it would include all our actual expenses and all our actual carrying charges on the entire year, and the difference between what we would have made if permitted to run uninterruptedly and what we actually lost would be the measure of recovery. This method of going into carrying charges is only pursued by me because of Your Honor's ruling. Now, if Your Honor will permit me at this time to put in the proof through Mr. Langer of what our actual losses were, subject to following it up with further testimony by Mr. Meyer as to the amount of business we would have done, in that way we will have the entire picture for the entire year, and there is no question of whether we allocated or did not.

THE COURT:

Well, I am sorry, but it seems to me that that is a more speculative method, and it gets us on a very questionable ground, because you have got to go into all that figure of what you would have done, and that is a very difficult proposition.

MR. HIRSCH:

Well, under the cases, if Your Honor please, what we would have done, all of the cases indicate that when you take a reasonable—

THE COURT:

Well, have you got any decision which al-

lowed damages on that basis? I am following now the decision in the Rice case.

MR. HIRSCH:

No, but we have all of the decisions, if Your Honor please, relating to profits—

THE COURT:

Oh, I know. Well, profits, all right, but the Rice case recognizes profits.

MR. HIRSCH:

Profits plus the other.

THE COURT:

Yes.

MR. HIRSCH:

Now, if you start with the fundamental principle of law that you are entitled to be made whole—

THE COURT:

Oh, yes, I know, you have made that argument. It is all right, it has some basis in logic, but I think we better do it this way.

MR. HIRSCH:

All right, I intend to prove it the other way also, after we have proved what the profits were. I mean, I think we are entitled to the entire spread for the year. I think we are entitled to be made whole for the year.

THE COURT:

Well, I am trying to allow what seems to me to be a proper way to do.

What are we looking for now?

THE WITNESS:

Looking for the shipping wages. Total shipping wages for the year was $9,216.39, and we have allocated $525.00 to that particular period, but I can't—

BY MR. SIMONS:

Q. How much was that?

A. For the whole year?

Q. Yes.

A. Ninety-six hundred—

BY MR. HIRSCH:

Q. Ninety-six hundred?

A. Yes, ninety-six—$9,216.39.

BY THE COURT:

Q. Well, do you know that that much was spent during that period?

A. That was for the entire—yes, there was some basis for making the allocation, Your Honor, but I can't just locate it for the moment. There must have been some purpose for making that allocation; only a small amount, five hundred and twenty-five dollars, but I can't locate it offhand.

THE COURT:

Well, go ahead.

MR. HIRSCH:

Well, it is obvious that it could not have been allocated on a 15/52 basis,—

THE COURT:

No, that is all right.

MR. HIRSCH:

—so it must have been on actual—.

MR. SIMONS:

If Your Honor please, unless we know just what it is about or how it is allocated I will have to ask that that be stricken out.

THE COURT:

I will strike out shipping wages—of how much?

MR. SIMONS:

$525.00.

MR. HIRSCH:

Subject to further proof, is that right?

THE COURT:

Well, yes, if you think it is worth while.

MR. HIRSCH:

Well, we will see.

BY MR. SIMONS:

Q. Now, you have an item of twelve hundred dollars as traveling expenses, Mr. Langer. Will you turn to that and let us know what that is?

A. What is the traveling expense?

Q. $1200.00.

THE COURT:

Let's see the thing that you are examining from. I want to see how many items there are.

THE WITNESS:

What is the total amount of that, Mr. Simons?

MR. SIMONS:

$1200.00.

THE WITNESS:

I mean for the entire year.

MR. SIMONS:

I don't know. You have the figures there. I only have it for that period.

THE COURT:

Well, isn't there some way you can get this in some kind of shape so you can refer to it promptly? It takes twenty minutes to look up every item here.

BY MR. HIRSCH:

Q. If the thing went over night could you get it in shape?

A. Well, I can explain that item now.

Q. All right.

A. On this traveling expense, there was New York, thirty-nine hundred dollars.

BY MR. SIMONS:

Q. Well,—

A. I will have to give it for the year—thirty-nine hundred dollars, and from miscellaneous traveling expenses of Mr. Steeple and the others around the plant, $468.75, making a total of $4,368.75.

Q. That is what you have charged here in the records, $4,368.75?

A. Yes, sir.

Q. For the full year?

A. That is correct.

Q. Now, you, therefore, proportioned it for that period of twelve hundred dollars arbitrarily?

A. For that period, twelve hundred dollars.

THE COURT:

Well, I don't think you can do that with traveling expenses. I will strike that out.

BY MR. SIMONS:

Q. Sales office rent and expense, $950.00, is your next item.

A. That is New York sales office.

Q. Does that relate to your New York sales office?

A. Yes, sir.

MR. SIMONS:

If Your Honor please, do you want me to go further on the question of the New York sales office expense?

THE COURT:

Oh, yes, why not? It was perfectly useless during that period, wasn't it?

MR. KATZ:

Oh, no.

THE COURT:

Why?

MR. KATZ:

Oh, no. I do know—

THE COURT:

Well, we will have to bring that out. I don't know.

THE WITNESS:

The total for the year was $3,730., of which $1,560. was for the clerk, salary of a clerk, $1,320., for rent, and $850. for miscellaneous expense.

BY MR. SIMONS:

Q. And you have simply allocated nine hundred and fifty dollars for that particular period of time?

A. That is perhaps right.

MR. HIRSCH:

That is correct. That is the only way it can be determined. That is a fixed charge for the year, and it is allocated according to the—

THE COURT:

Yes, I guess it is.

BY MR. SIMONS:

Q. Well, now, Apex has another plant, do they not, in Spring City?

A. Apex have another plant?

Q. Yes.

A. No, sir.

Q. They have another plant in Spring City?

A. Apex don't have another plant in Spring City.

Q. Is there another plant in Spring City that is under the direction or supervision of the Apex Company?

A. No, sir.

Q. Was there in 1937?

A. Not under the supervision of the Apex Hosiery Company?

Q. Under the supervision of whom?

A. I don't know.

Q. Well, you know there is a plant in Spring City?

A. There is a plant, yes, there is a plant in Spring City.

Q. And you know that the sales office sells merchandise from that plant in Spring City?

A. I do not, no.

Q. Do you know anything at all about this New York Office?

A. No, sir.

Q. You don't know anything about their operations?

A. No, sir.

Q. Don't know anything about their expenses?

A. No, sir.

Q. And as far as you know, they may be selling seventy-five other items in addition to the hosiery of the Apex Hosiery Company?

A. They may.

Q. And you haven't checked up on that at all?

A. No, sir.

Q. All you have are the figures that they told you to charge to that particular account?

A. Yes, sir.

THE COURT:

Well, I guess I will have to strike that out.

MR. HIRSCH:

No, if Your Honor please, unless they show that this charge was for other than the Apex Hosiery, and they haven't shown that yet.

MR. SIMONS:

If Your Honor please, I can't assume a burden of that kind.

THE COURT:

Gentlemen, why don't you let me rule? I will strike it out. I think the burden is on the plaintiff to show that this sales office was devoted entirely to the sale of hosiery from the Apex plant.

MR. HIRSCH:

May I interrogate the witness, or I will put another witness on the stand who will show that fact?

BY MR. HIRSCH:

Q. In other words, was any charge made on the books of the Apex Hosiery Company covering its New York sales office, for any activities of that office other than its activities for the Apex Hosiery Company.

MR. SIMONS:

If Your Honor please, he has answered that. He says he doesn't know, except he was told those were the charges.

THE COURT:

Don't interrupt. We all want to get the correct picture.

MR. SIMONS:

The facts—

THE COURT:

We don't want the witness to do himself or

anyone any injustice. We want to get this correct picture of what he did here if we can.

Now, go ahead and answer that question.

BY THE COURT:

Q. Do you know?

A. Would you mind repeating—

Q. Do you know whether that item of thirty-seven hundred and thirty dollars included any expense which would be properly chargeable to anything other than Apex sales, or don't you know, or do you know anything about it?

A. All I can answer to that question is, that represents the salary of a girl over there. Now, whether the girl has—whether the office handles any other business outside of Apex, I don't know.

Q. Does that represent her total salary?

A. That is her total salary for the year, $1,560.00. It is thirty dollars a week for the fifty-two weeks.

BY MR. HIRSCH:

Q. And the rent is for the entire office?

A. And the rent is for the entire office for the year.

THE COURT:

All right, I will strike it out, subject to further proof.

MR. HIRSCH:

All right, I will get that.

BY MR. SIMONS:

Q. Now, you have an item of salesmen's salaries, $3,750. Do you have the allocation of that?

A. Yes, that is the salary of the New York salesman, Mr. Saupe.

Q. And he gets thirteen thousand dollars a year?

A. He gets thirteen thousand, that is right. What is the total charge on that—

Q. Thirteen thousand, here. (Indicating).

A. Yes, that is right.

Q. Do you have that in these books anywheres?

A. Well, it is traveling expense—

Q. You mean everything appears in this one item?

A. Yes.

Q. All right. Now, have you had any personal contact with this salesman in New York?

A. No, sir.

Q. Do you know anything about him at all?

A. No, sir.

Q. Know what he does in New York?

A. No, sir.

Q. Know whether he sells any merchandise of any other manufacturers?

A. No, sir.

Q. All you know is that that item appears on the books?

A. Yes, sir.

MR. SIMONS:

If Your Honor please, I make a similar motion as to that item.

MR. HIRSCH:

If Your Honor please,—

THE COURT:

This is a different situation.

MR. HIRSCH:

Certainly. Here is an auditor who checked the books. He doesn't know whether so many dozen were produced; he could be asked, "Do you know, when you testified there were four hundred and four thousand dozen, did you see them?"

THE COURT:

I wasn't thinking so much about that, but here is a full-time employee, and he may do some little other things, but I will—

MR. SIMONS:

If Your Honor please, before you rule on that—

THE COURT:

No,—

MR. SIMONS:

—my thought is this,—

THE COURT:

—I—

MR. SIMONS:

—that this New York office does more than sell hosiery only for Apex.

THE COURT:

I don't know that.

MR. SIMONS:

I know you don't. I don't, either. They haven't presented the proof. The burden is on them to prove it, not on us to disprove it.

THE COURT:

I will overrule your objection as to this item.

BY MR. SIMONS:

Q. Now, you have salaries of officers, $10,125. Can you tell us what that is?

A. Salaries of officers—that would be Mr. Meyer. Yes, that is Mr. Meyer.

Q. In other words, his salary for the year is thirty-five thousand, one hundred dollars, and you have apportioned an amount for that fifteen-week period?

A. I believe that is right.

Q. Do you know whether or not Mr. Meyer spent any time up in Spring City?

A. No, I don't.

Q. Do you know whether or not Mr. Meyer spent any time in New York at the New York office?

A. No, sir, not definitely.

Q. You know Mr. Meyer does spend time in the New York office, don't you?

A. I know Mr. Meyer makes trips to New York frequently, but what he does and where he spends his time I don't know.

THE COURT:

Well, there is no evidence that Apex owns any other plant.

MR. HIRSCH:

And it does not.

THE COURT:

The evidence is that it does not. Go ahead.

BY MR. SIMONS:

Q. Do you know that Mr. Meyers spends some time in the Chicago office?

A. I don't know.

THE COURT:

The fact of the matter is, I think I was wrong in striking out that item of $950. for office rent and expense in New York, and I will change the ruling on that and overrule your objection, and allow that to stand.

MR. SIMONS:

If Your Honor please, don't you think—

THE COURT:

Oh, please don't argue it after I have ruled.

MR. SIMONS:

All right.

THE COURT:

Now, we can't spend our time listening to arguments about it. If I am wrong about it you have your remedy.

BY MR. SIMONS:

Q. Office salaries of $8,243.40; what does that represent?

A. That would be salaries of the office employees of Apex.

Q. Do you have the pay-roll schedule for that?

A. We have the pay-rolls.

Q. May I see them?

A. Yes, sir.

(Discussion off the record.)

THE WITNESS:

$8,243.40?

MR. SIMONS:

Yes.

(Discussion off the record.)

THE WITNESS:

That represents the salaries of the people in the—the clerks in the office.

BY MR. HIRSCH:

Q. Actually paid during that period?

A. Actually paid during that period, yes, sir.

BY MR. SIMONS:

Q. They were not all working during that period, were they?

A. Yes, sir, they were.

Q. Of the office?

A. Yes, sir.

THE COURT:

Well, I don't believe it is material whether they were all working or not. If they had to be paid in order to keep the organization together, whether they worked or not, it would be a proper charge.

BY MR. SIMONS:

Q. Now, these sheets aren't just the office sheets, are they?

A. Yes, sir, they are just—well, there is other salaries on there besides the office.

Q. Well, you have Carl Hoch here, and William Ludwig?

A. That is right.

Q. They are engineers, aren't they?

A. That is the foremen and foreladies.

Q. Now, wasn't the office force in the plant before August 19th, 1937?

A. I don't recall the date when they came back.

Q. Well, didn't they come back to the plant before that time?

A. I don't recall the date.

Q. Weren't they working in the office before then?

A. Before when?

Q. August 19th, 1937?

THE COURT:

Well, I don't think that would make any difference, if they were. What difference does it make? The plant wasn't turning out any product, it wasn't manufacturing anything.

MR. SIMONS:

Well, they were certainly doing a certain amount of work required in the office, the regular routine of the office, and we shouldn't be charged with the full amount of their salaries.

THE COURT:

I don't see why not, if they had to be paid during the period when there was nothing going on.

MR. SIMONS:

But there certainly was something going on, at least after they got into the plant, for that period of time.

MR. HIRSCH:

That is right, we were repairing damage.

MR. SIMONS:

Thanks for the comment, Mr. Hirsch, I think it helps the situation quite well.

I think that certainly the last month's salaries that they have charged here was the time when they were in the plant and they were doing work that would be necessary for their operations. I can't see where some of that they were paid where they may or may not have been doing any productive work.

THE COURT:

Well, it is hard to arrive at a correct—

MR. SIMONS:

I didn't get that, Your Honor.

THE COURT:

It is difficult to arrive at an absolutely correct—

MR. SIMONS:

It isn't so difficult, because we find this, that the charges during the early part of the term, May 14th to 21st, were $646. a week, and similar charges are made on the pay-roll of August 20th, of $599., the 13th, of $626., so they really charged us for the full pay-roll during the latter part, at the time when they were back in the office, whereas we vacated the office on the 23rd. Let's say the matter was finally terminated on—when was it, September 29th, wasn't it?

MR. HIRSCH:

What?

MR. SIMONS:

July 29th, so you have a period of at least three pay-rolls, which amount to around eighteen hundred dollars.

MR. HIRSCH:

If Your Honor please, even admitting that they were back—I don't know when they came back—even admitting they were back and working, if, on the other hand, we were not able to produce and bring in any income as a result of our production activities to offset the expense, it is a necessary expense during the shut-down.

THE COURT:

All right, I will allow it.

MR. HIRSCH:

The same as every other one.

MR. SIMONS:

You are allowing the item, if Your Honor please?

THE COURT:

I think so.

MR. SIMONS:

Grant me an exception.

BY MR. SIMONS:

Q. You have a telephone item of $241.39—

THE COURT:

How much is this pay-roll?

MR. SIMONS:

$8,243.40.

A. The total telephone charge for the year was $1,856.25, and I believe that was allocated on a proportionate basis of that period.

MR. HIRSCH:

Well, that couldn't have been, because you are only charging $241. and that is not fifteen fifty-seconds. That would be one-eighth, and it is one-third of the year, so it couldn't have been that.

THE COURT:

Well, you will have to prove it the other way, you will have to prove what was actually spent, if you think it is worth while.

THE WITNESS:

We can get it.

MR. HIRSCH:

We will prove that tomorrow.

THE COURT:

Do you want to bother with it? It is only two hundred and some dollars.

MR. HIRSCH:

It is a stand-by charge for the telephone that had to be paid.

MR. SIMONS:

Well, Mr. Hirsch, will you please stop testifying?

THE COURT:

Some of it was, some of it may have been long distance calls, but it does seem to me, gentlemen, it is really not worth our while. Here you have some items worth talking about, two or three

thousand dollars. When you talk about an item of telephone charges, two hundred and fifty dollars, it just seems quite futile to sit here and bicker about it.

How much was the telephone charge?

MR. SIMONS:

$241.39.

THE COURT:

Just think of it!

MR. HIRSCH:

All right, go to the next. For the moment Your Honor may strike it out, subject to our desire to re-prove it.

THE COURT:

Oh, yes. It isn't worth re-proving.

BY MR. SIMONS:

Q. Now, you have a charge for legal and accounting of $1,588.28.

A. That is right. The total for the year—

Q. Now, wait a second.

MR. SIMONS:

Do you think that is a proper charge?

MR. HIRSCH:

How much is it?

MR. SIMONS:

$1,588.28.

MR. HIRSCH:

I will ask him a question.

BY MR. HIRSCH:

Q. Does that "legal" cover any extraordinary services by reason of the strike?

A. No, sir.

BY THE COURT:

Q. What is that, annual retainer?

A. Yes, sir, and accounting fees.

THE COURT:

All right.

MR. HIRSCH:

Then I press it.

THE COURT:

That is all right.

BY MR. SIMONS:

Q. Let me see the charge, will you, please?

A. Well, twenty-four hundred of it—

Q. Let me ask you something. Don't these items appear in your general ledger anywheres?

A. No, because they are all in general expense.

BY THE COURT:

Q. All right, now, tell us about this. Go on.

A. The accounting bill is twenty-four hundred dollars, that is our bill, and the remainder is legal fees.

Q. And they are both annual charges?

A. Yes, sir, that is a portion of the legal fees. I don't know exactly, offhand, how much the retainer fee is. Maybe Mr. Steeple can tell you now how much that is, but the rest of it is actual charges made during the year for legal fees.

MR. HIRSCH:

What is the actual retainer?

MR. STEEPLE:

About twelve hundred and fifty.

MR. HIRSCH:

The retainer is?

MR. STEEPLE:

Yes, twelve hundred and fifty per year.

MR. HIRSCH:

I think we are only entitled to a proportion of the retainer and a proportion of the other charges. Will you figure that out and proportion it on a fifteen fifty-seconds basis?

MR. SIMONS:

That would be about twelve hundred dollars at the most.

MR. HIRSCH:

What was the total of that item in the beginning?

MR. SIMONS:

Fifteen hundred.

THE COURT:

How much of that comes out?

THE WITNESS:

$1,588.28.

MR. HIRSCH:

$1,050.00, Mr. Ladenheim says. I will accept that, instead of $1,588.28.

THE COURT:

How much do I strike out?

MR. HIRSCH:

$538.28.

THE COURT:

All right.

(Discussion off the record.)

BY MR. SIMONS:

Q. You have office expense of $309.61. What does that represent?

A. That would be miscellaneous office expense which for the year totaled $1,698.66.

Q. And you proportioned for that period of time?

A. I would say offhand, yes.

MR. SIMONS:

If Your Honor please, I don't think that that is a proper charge.

BY THE COURT:

Q. Well, what does it mean, paper and pencils?

A. Just miscellaneous stationery and supplies.

MR. SIMONS:

We have been charged with the bill for all of that in the other item.

MR. HIRSCH:

No.

MR. SIMONS:

We have refurnished the whole office.

THE COURT:

I will strike it out. Office expense, how much was it?

MR. SIMONS:
$309.61.

THE COURT:
$309.?

MR. SIMONS:
Yes.

THE COURT:
All right.

BY MR. SIMONS:
Q. How about the item of postage, was that proportioned the same way?
A. Presumably, yes.

MR. SIMONS:
I ask Your Honor—

THE COURT:
How much was that?

MR. SIMONS:
$337.34.

THE COURT:
Strike it out.

BY MR. SIMONS:
Q. Dues and subscriptions, $1,743.03.

MR. HIRSCH:
Do you want to know what that is?

MR. SIMONS:
That is what I asked him.

A. That represents in part the National Association of Hosiery Manufacturers annual dues.

BY MR. SIMONS:

Q. As annual dues; where is it in your general ledger?

A. It is all part of general expense.

Q. Well, where in your general expense does it appear? I can't seem to find—

A. You can't find it there, because the account must be analyzed in detail to ascertain these items.

Q. Well, how did you make up your analysis from this? You don't take care of these books daily?

A. No, when I make the audit I analyze the account for each individual item appearing therein.

Q. Where is the analysis of general expense?

A. Right here (indicating).

Q. Appearing in your work sheets?

A. Right here.

Q. Let me see it.

(The witness produced the analysis.)

BY MR. SIMONS:

Q. This is an analysis of this general expense?

A. That is correct.

Q. Railway Audit, $7,343.55?

A. That is correct.

Q. Now, did you charge part of these general expenses on these—on this item that we have here? In other words, you took this general expense account and charged us proportioned on the various items that you have here?

A. Yes, sir, the various items.

Q. Now, who is the Railway Audit?

BY MR. HIRSCH:

Q. Was that charged in this account, in this—

A. No, sir.

MR. HIRSCH:

I object to that question, then, if it wasn't charged for in this account.

MR. SIMONS:

Well, he just said that it was. He said that he charged a proportion for all these things.

THE COURT:

No,—

MR. HIRSCH:

He said, "No, sir".

THE COURT:

He said, no.

MR. HIRSCH:

Objected to.

BY MR. SIMONS:

Q. Where does this Railway Audit appear in this general expense account?

MR. HIRSCH:

That is objected to because it is not an item for which we are asking reimbursement.

MR. SIMONS:

If Your Honor please,—

THE COURT:

All right.

MR. SIMONS:

—I am trying to check this. I can't do it.

THE COURT:

That is all right.

MR. SIMONS:

I have been trying to check it and I can't do it.

BY MR. SIMONS:

Q. Show me where it appears in this general expense account.

A. I can't show it to you. It is part of the items—I would have to get the cash—

Q. Well, show me the component parts of it, so I can read the general ledger.

A. Do you have the cash book?

THE COURT:

Let me ask you, gentlemen, the entire claim for this period on the overhead, as I have it down here—am I correct? —is one hundred and twenty-two thousand?

THE WITNESS:

That is correct.

THE COURT:

Well, now, if you take every one of these items and add them up, that have been objected to, I don't believe it adds up to twenty thousand dollars, and of those there is a probability or likelihood that you can support quite a number of them. Can't you make a general agreement as to how much of it is really not subject to attack? Of course, I understand that you don't admit any of it, but—

MR. HIRSCH:

Well, the items that have been eliminated to-

tal approximately about seventy-five hundred dollars,—

THE COURT:

No,—

MR. HIRSCH:

Plus some of the ones that we intend to prove.

THE COURT:

Well, I say—seventy-five hundred—suppose you cut it down by fifteen thousand, it would leave you with one hundred and seven thousand dollars of items in this claim. I don't know that it would make much difference. However, do as you please about it. We could save a great deal of time.

MR. HIRSCH:

If this will end a long examination and get on with the case, and you think that is the way to do it, I have no objection, if it is agreed to.

THE COURT:

Well, do you expect to be able to exclude more than, say, fifteen thousand dollars of this item?

MR. SIMONS:

I don't know, if Your Honor please. We are being charged. We are, very frankly, on the defensive here, at all times. We were given total figures, and told, "Now, you go ahead and disprove them." Now, I have to try to disprove them, and I think it is more important, even, than a question of dollars and cents to show that they are charging us with everything possible, they have taken accounts of this kind and broken the accounts down and charged us

with everything along the line in a proportionate manner.

THE COURT:

No, not in every case. Well, in many cases it was a proper way to do.

MR. SIMONS:

In some few it might have been, where there were definite fixed expenses that could not be allocated.

THE COURT:

Yes, well, I don't care, go ahead.

I think we will recess for ten minutes.

(Recess at 3:30 o'clock P. M.)

JOSEPH C. LANGER, resumed.

Cross Examination (Continued)

BY MR. SIMONS:

Q. Are you prepared now to show me the analysis of this general ledger account?

A. Yes.

Q. And how you make up this item?

MR. HIRSCH:

What is the item called, and how much is it?

MR. SIMONS:

Railway Audit Account, $73—

MR. HIRSCH:

That is objected to,—

MR. SIMONS:

$7,343.55.

MR. HIRSCH:

—because there is no charge being made for it.

THE COURT:

Well, there is no charge being made for it. It may just have a bearing on something, I don't know.

MR. HIRSCH:

Well, I would like Mr. Simons to state what it is to Your Honor at side bar.

THE COURT:

Well, he may want to show that the accountant has made a big mistake somewhere else, and therefore there are a lot of mistakes here, I don't know.

MR. SIMONS:

I, frankly, want to check that item against the general ledger. I have been trying to check these items.

THE COURT:

Go ahead, I will permit you to ask the question.

BY MR. SIMONS:

Q. Show me where that Railway Audit Account appears in the general ledger and how it is made up. Show me in the general ledger here, and not your work sheets.

A. All right.

Q. '37, we are in.

A. It comes probably from the cash book, and

it would be contained in the various items from the cash book.

MR. HIRSCH:

May I see Your Honor at side bar for a moment?

THE COURT:

Yes; sir.

(The following occurred at side bar:

THE COURT:

It appears from counsel's statement that this Railway Audit item is an item of payment for detectives and other services which might be argued to be strike breaking agencies. I didn't know that when I originally ruled. If this is so, the prejudice or effect seems to me to be sufficient consideration to justify the Court in sustaining the objection, particularly in view of the fact that there is no claim whatever being made for any part of this item, and of the fact the effect upon the witness' credibility is extremely remote, so I will sustain the objection.

MR. SIMONS:

May I just say this, we are being charged with the item, because they say they have lost so much during 1937, and that is an item of charge.

THE COURT:

No, it is not, they are not saying they lost so much, they are not proving on that theory at all. They are not proving for loss. They are proving for loss of profits plus expenses that

were non-productive because of the idleness of the employees of the plant.

MR. HIRSCH:

Correct.

THE COURT:

Now, that is a different theory from that which Mr. Hirsch originally propounded, and this is the theory which the Court has adopted, so that there is no possible basis for any part of this account being charged against the defendants.

MR. KATZ:

May I say on the point, Your Honor, that we are entitled to the evidence on this point inasmuch as it may very well bear upon other questions in the case bearing on liability.

MR. HIRSCH:

Nothing to do with the cross examination of this witness.

MR. KATZ:

An item appears. We have the right to get full details of what that item means.

MR. HIRSCH:

No, sir.

MR. KATZ:

May I complete my statement?

MR. HIRSCH:

I beg your pardon. Go ahead.

MR. KATZ:

And to deprive us of the right of cross examining one witness is to divide the case into sections.

THE COURT:

Well, the only theory on which you would be entitled to cross examine on this would be that you would be entitled to cross examine upon every item appearing in the books at any point, regardless of whether any claim is being made in connection with that or not, and I think the Court has the discretion to limit the cross examination to matters reasonably relevant to the items claimed, and particularly in view of the fact that other issues may be introduced which have nothing to do with this case, but may be prejudicial, and, therefore, I will sustain the objection.)

BY MR. SIMONS:

Q. What is the last item of discussion?

A. Item of dues and subscriptions.

Q. Do you have a dues and subscription account in your general ledger?

A. No, that is also part of the—that is also part of the general expense.

MR. HIRSCH:

Mr. Langer, all these people want to hear you.

THE WITNESS:

That is also part of the general expense. I am sorry.

BY MR. SIMONS:

Q. Now, will you show us the breakdown of the dues and subscriptions in your general ledger? By the way, where are the sheets of this general ledger prior to May 31, 1937?

A. I presume they are in the transfer.

Q. May we have those transfer sheets?

(The sheets were produced by Mr. Steeple.)

BY MR. SIMONS:

Q. Now, can you give me the breakdown of that item in the general ledger?

A. Breakdown?

Q. Yes, I want to know how you got that figure.

A. All right, I can show you how it is gotten.

Q. Wait a second, dues and subscriptions, what is the total?

A. Two thousand—

Q. $2,078.?

A. That is right.

MR. HIRSCH:

How much is the item we are charging you with?

MR. SIMONS:

You are charging us with $1,743.03.

MR. HIRSCH:

All right, now, explain it.

THE WITNESS:

There is five hundred dollars in April, making up the $1,183.20.

BY MR. SIMONS:

Q. Now, wait a second, in April, you said $1,183.20?

A. No, over in '37.

Q. Here is '37. Here it is in this transfer sheet. $1,183.20?

A. That is right.

Q. 395 means what?

A. That is the cash book.
Q. Do you have your cash book?
A. Yes, sir.
Q. Can we see 395?

BY MR. HIRSCH:

Q. You say five hundred dollars of that item is charged in this $1,743.?
A. That is part—five hundred dollars of that is Association dues.

(Mr. Steeple produced the paper requested.)

MR. SIMONS:

Now, wait a second, just a second, let me just look at this a second.

BY MR. SIMONS:

Q. All right, now, let's see how you pick this up.
A. (Indicating) Made-in-America Club.
Q. That is, on April 12th, I guess, on April 12th, 1937, you paid five hundred dollars to the Made-in-America Club. Do you know anything about this Made-in-America Club, Incorporated?
A. No, sir.
Q. Do you know the purpose or function of that organization?
A. No, sir.
Q. Do you know whether or not this was merely a donation?
A. I do not.
Q. Where is the rest of the item?
A. In June you will find an item for a thousand dollars.

MR. HIRSCH:

In June? Keep your voice up.

THE WITNESS:

In June.

BY MR. HIRSCH:

Q. How much?

A. In June you will find an item of a thousand dollars.

BY MR. SIMONS:

Q. June, when?

A. 1937.

Q. Full Fashioned Hosiery Association; do you know what that represents?

A. No.

Q. Do you know whether that was a donation or a contribution, or what that might have been?

A. No. I saw the invoices there. I think the invoices fully describe what they were.

Q. Do you have the invoices?

A. I don't believe we have the invoices here, but we could support it.

Q. All right, now, what other item do you have?

A. In October, an item of two hundred and fifty dollars.

Q. Also payable to the Full Fashioned Hosiery Association?

A. That is what it is marked here.

Q. Any other item?

A. There is an item in December.

Q. How much?

A. $328., Full Fashioned.

Q. Also made to Full Fashioned Hosiery?

A. That is correct.

Q. Do you know anything about that?

A. No, sir.

Q. Do you know the reason or the nature of those charges?

A. Not offhand.

Q. Do you know who this association is?

A. No, sir.

Q. Do you know anything at all about that?

A. No, sir.

Q. That is a total of $2,078.?

A. That is correct.

Q. And you charge here $1,743.03.

A. There is some—there are some additional items in the vouch register which we will have to bring in. We don't have the vouch register here, but there is $5,219.19 charges from the vouch register.

Q. Well, what is that for? $5,—

A. 219.19.

Q. And when was that?

A. That was all during the year 1937.

Q. What date, do you know the date?

A. Well, all during the year.

Q. Do you have the analysis under your dues and subscription account?

A. I am just looking.

Q. Here it is?

A. No.

Q. All right, do you know what that item represents?

A. No, I would have to get the vouch register to support the details on that. I mean, I would have to get the vouch register to give you the breakdown on that figure.

Q. Do you know to whom it was paid?

A. Not offhand.

MR. SIMONS:

If Your Honor please, I don't believe that this whole item or any part of this item is chargeable to us as an expense. Now, here are payments made to a Made-in-America Club, Incorporated, to Full Fashioned Hosiery Association, Incorporated, and in various sums, and another item the details of which we know nothing about. Now, they may have been purely contributions on their part. They have a perfect right to do as they please with their money but not to charge us with it.

THE COURT:

Have you anything to say?

MR. HIRSCH:

Was that the National Association or the Full Fashioned?

MR. SIMONS:

This is Full Fashioned Hosiery Association.

MR. HIRSCH:

That is what I want to find out.

MR. SIMONS:

Yes, well, I copied that from the book, Mr. Hirsch.

MR. HIRSCH:

It is Full Fashioned in October. What was it in June?

MR. SIMONS:

On June—thousand dollars—June 9th.

MR. HIRSCH:

What was that, to whom?

MR. SIMONS:

Full Fashioned Hosiery Association.

MR. HIRSCH:

Check that June item, will you?

MR. SIMONS:

Here it is. Here you are, Sylvan.

(Discussion off the record.)

MR. HIRSCH:

I am going to leave this up to Your Honor. I find that the Made-in-America five hundred dollars was a contribution. I don't think the defendants should be charged with that.

THE COURT:

Strike it out.

MR. HIRSCH:

The three payments to the Full Fashioned Hosiery Association in June, October and December represented assessments by that association of which the Apex was a member, and I think that is—

THE COURT:

Yes, I think that is—

MR. HIRSCH:

I think that is a proper charge.

THE COURT:

So do I.

MR. HIRSCH:

$5,219.19, we don't have the supporting data, and it should be stricken out until we do.

THE COURT:

How much does that reduce that item?

MR. HIRSCH:

That makes $1,578, and that will have to be proportioned.

THE COURT:

How much does it reduce—I am keeping track—

THE WITNESS:

This is the amount for the year.

BY MR. HIRSCH:

Q. What would the proportion be?

MR. HIRSCH:

Well, in round figures—let's save time—it would be about five hundred dollars, so the item of $1,743.03 would be reduced by $1,243.03, unless we prove further facts when we get our records. We want to save time.

MR. SIMONS:

If Your Honor please, there has been no proofs at all as to what this association is, their purposes or aims, or what the nature of these payments was, except a statement by Mr. Hirsch, which is not evidence.

MR. HIRSCH:

I agree with that.

MR. SIMONS:

I ask Your Honor to cross out this entire item.

THE COURT:

Well, I think assessments or dues, or what-

ever it is, of a hosiery association are proper recurring charges and can be apportioned.

MR. SIMONS:

Well, there is no evidence as to what they are or that they are dues.

MR. HIRSCH:

Technically speaking, Mr. Simons is right, I can't testify, so that if you want you can strike the whole item, with leave to me to produce testimony.

THE COURT:

All right. What is the whole item?

MR. HIRSCH:

$1,743.03; and we will produce testimony on that, on that point.

MR. SIMONS:

Dues and subscriptions.

MR. HIRSCH:

All right, that will save time.

BY MR. SIMONS:

Q. You have an item of $728.53 for general expense. What is that supposed to be? What is the total of your general expense for the entire year?

A. I have $3,190.18.

Q. $3,190.

A. .18.

Q. Where is that?

A. It is made up of these items (indicating), welfare, $215., miscellaneous auto repairs, $423.92, pay-roll delivery, $351.75, miscellaneous wages, $356.13.

Q. And a miscellaneous account of $1,858.38, which is what?

A. Why,—

Q. Now, let me ask you this, the figures on this statement, this typewritten statement, for 1937, are not exactly in accord with your working sheets, is that correct?

A. Yes, but this—this may have been adjusted.

Q. Adjusted, you mean with other items here?

A. That is right.

Q. Your general expense adjusted with other items?

A. Fifteen dollars, in that particular case.

Q. Now, this particular item that you are charging, $728.53, for the period of May 6th to August 19th, consists of a miscellaneous expense of—

A. Eighteen hundred—

Q. —$1,858.38?

A. For the entire year.

Q. You don't know what that is about?

A. Not offhand. We could get the supporting data, but we don't have the information here.

MR. HIRSCH:

I will withdraw it until I prove it.

MR. SIMONS:

Withdraw the whole item?

MR. HIRSCH:

Yes, until I prove it.

MR. SIMONS:

All right.

MR. HIRSCH:

No use in taking time now, if we don't have it here.

THE COURT:

How much is it?

MR. SIMONS:

$728.53.

MR. HIRSCH:

$728.53, as long as we don't have the data.

BY MR. HIRSCH:

Q. Is that right, the data isn't here?

A. That is right, the data isn't here.

MR. HIRSCH:

We will try to get it.

BY MR. SIMONS:

Q. Pennsylvania capital stock tax, $2,720.60?

A. Yes, sir.

Q. Now, suppose you explain to us what the Pennsylvania capital stock tax is.

A. Pennsylvania capital stock tax is an eight mill tax—

Q. On what?

A. On the declared value or the actual value of the assets of the company at the end of each particular year.

Q. In other words, you have a right, or you had a right several years ago to declare the value of your stock?

A. No, sir, you are referring now to Federal capital stock tax.

Q. Oh, this is the Pennsylvania capital stock tax; all right, go ahead.

A. You are still referring to the Pennsylvania?

Q. Yes, that is the Pennsylvania, I am sorry. I was referring to the Federal.

A. The Pennsylvania capital stock tax is the value established by the State Department.

Q. And that is on your capital stock, and that is a matter—

A. Based on—

Q. On the value?

A. No, sir, it is based on the actual value of the assets.

Q. Actual value of assets?

A. Yes, sir.

Q. It has nothing to do with profits or losses?

A. Only indirectly. The profit or loss may be used as a factor in determining the actual value for tax purposes.

Q. But when they considered the value they asked you to give them the book value and the actual value of the assets?

A. And they also ask you to give them any income that you may have had for the past five-year period.

Q. But the return is on assets?

A. The return is based on assets.

Q. In other words, you have the building, your cash, inventories, and other assets?

A. That is correct.

Q. Now, how did you arrive at that figure of $2,720.60?

A. The total for the year was nine thousand—the total for the year is estimated at $9,446.52.

Q. Let me see that in your books here.

BY MR. HIRSCH:

Q. How much is it?

A. $9,446.52.

Q. Total tax for the year.

MR. HIRSCH:

This sheet that I am looking at is our sheet, isn't it?

MR. SIMONS:

Yes.

MR. HIRSCH:

I didn't want the jury to think I am looking at your papers.

MR. SIMONS:

You are perfectly at liberty to look at my papers.

MR. HIRSCH:

That is the one Mr. Ladenheim gave to me.

(Discussion off the record.)

THE WITNESS.

Let me look at my trial balance, to see where it is.

BY MR. SIMONS:

Q. Well, now, you have it here as a reserve for estimated Pennsylvania capital stock tax?

A. That is correct.

Q. In other words, you estimated what the tax would be?

A. Yes, sir.

Q. And can you tell me what the tax actually was?

A. It was very close to that figure, I can't recall offhand, but we can get the return down showing the actual return.

Q. Well, let's see it on your books. You have it on your books here?

A. Yes, it is on the books.

MR. SIMONS:

May I at this time ask Your Honor's thought in this matter? This is a tax that is purely on assets, has nothing to do with profits or losses, it has to be paid regardless of what the operations of the business would show, with the exception as to whether or not profit is added to surplus, and the increase in value of any particular assets, or whether there is a change in inventory value.

THE COURT:

Well, I think it is a proper item.

MR. SIMONS:

You think it is a proper item?

THE COURT:

I will overrule the objection; yes.

MR. SIMONS:

I say, that has to be paid regardless—

THE COURT:

I know.

MR. SIMONS:

—of what happens.

THE COURT:

Surely.

MR. SIMONS:

That is why I don't think it is a proper item or charge.

MR. HIRSCH:

All the more reason why it is a charge.

(Discussion off the record.)

BY MR. SIMONS:

Q. You have an account here, reserve for Federal and Pennsylvania taxes. As you set up your account on your statement as reserve for estimated Pennsylvania capital stock tax of $9,446.52, that would be set up as a credit in the account, in the reserve account, and charged through as an expense for the operations of the year.

A. That is correct.

Q. Now, there is no such charge on this particular account of reserve for Federal and Pennsylvania taxes, is there?

A. I can't locate it offhand, but there must be a corresponding entry.

MR. HIRSCH:

Just take your time.

BY MR. SIMONS:

Q. Now, this is paid when to the Pennsylvania—

A. It is paid March 31st of each year.

Q. 31st, or the 15th?

A. 15th.

Q. It is due the same time—

A. The same.

Q. —as the Federal taxes are due?

A. That is correct.

Q. Now, in 1938—

MR. HIRSCH:

Let him find this, now.

MR. SIMONS:

Well, maybe I can straighten this out. I can read this.

BY MR. SIMONS:

Q. On March 31, 1938 you have a payment to the Pennsylvania C. S. T., which may be your capital stock tax, of $4,451.45?

A. What date is that?

Q. March 31, 1938.

A. This—'38.

Q. That would be for '37 capital stock tax,—

A. No.

Q. —wouldn't it?

A. That is when they changed from a fiscal to a calendar year basis for Pennsylvania capital stock tax purposes, and they had to pay one-half year in there, which was about half of the nine thousand dollars. In other words, they filed a return for one-half year.

Q. Well, see if you can find that entry to show that entry on these books here.

Let me ask you this, would this have been paid through your cash book?

A. It should be paid through the cash book.

Q. Now, if we look at March 15, 1938 would that give us the figure.

(Discussion off the record.)

MR. SIMONS:

Will you note that the cash book, page 479, shows a payment on March 10, 1938, Department of Revenue, Pennsylvania capital stock tax, of $4,451.45.

BY MR. SIMONS:

Q. Now, March 31st, is there any payment?

BY MR. HIRSCH:

Q. Is there another payment on March 31st?

A. No. Look in July.

BY MR. SIMONS:

Q. July of when, '37?

A. '37.

Q. July, '37.

THE WITNESS:

Mr. Hirsch, I think we can support that if we can look it up tonight, because there was some trouble about the Pennsylvania capital stock tax.

BY MR. HIRSCH:

Q. What figures do you need? You have a figure here.

A. Yes, but that is not the figure we are claiming in this account. I believe what we have set up as the nine thousand dollars is correct.

Q. You mean $9,446.52 is correct?

A. Whatever that figure is for the year is correct, yes, sir.

Q. That is the actual payment made?

A. I believe it is.

BY MR. SIMONS:

Q. Well, there is no record of it in your books, in your cash book?

A. Well, I would have to refresh my memory, look it up.

THE COURT:
How much is it?

MR. SIMONS:
$2,720.60.

MR. HIRSCH:
I would like to withhold that until we can—

THE WITNESS:
We can support it.

MR. HIRSCH:
The witness can look it up overnight.

THE WITNESS:
We can support it.

THE COURT:
All right.

BY MR. SIMONS:
Q. Now, how about your Federal capital stock tax of 432, $432.?
A. That was fifteen hundred dollars for the total year.
Q. Well, now, let's see. Where is it?

BY MR. HIRSCH:
Q. That is proportioned?
A. That is proportioned, yes, sir. That is July 31st.

(Discussion off the record.)

THE WITNESS:
That was the year when—I might add originally we had fifteen hundred dollars set up on the Federal capital stock tax and then, of

course, in 1937, the profits—there was no permission given or granted to re-value on the Federal capital stock, so with the profits that adjustment was made, I think it was two thousand dollars we originally set up, and then we had a loss applied in there and brought it down to that figure.

BY MR. SIMONS:

Q. Well, now, that original figure of fifteen hundred dollars is a figure that was arbitrarily set by you in order to establish the value of the capital stock?

A. That is correct.

Q. In other words, you said that your capital stock was worth what, one hundred and fifty thousand dollars—or, one million, five hundred thousand dollars?

A. I think it was around million that was used on that basis.

Q. Well, if you set fifteen hundred dollars that you paid, that was because you yourself said that your capital stock was worth a million, five hundred thousand dollars?

A. Who do you mean when you say "you"?

Q. Well, you on behalf—you for the company.

A. No, sir, the company set that value.

Q. Oh, the company set that value, and that is the report that you filed?

A. Yes, sir.

Q. That was an arbitrary value put on by themselves because of the fact that you were allowed a certain percentage of profit on a million, five hundred thousand dollars, and if you went above that

percentage you then had to pay an excess profits tax?

A. That is correct.

Q. And that is the reason you set that figure?

A. I don't say that is the reason it was set. That is the value that the officers of the company set upon the value of the capital stock for that purpose.

Q. And that is purely a matter of tax strategy, I might say.

MR. HIRSCH:

Now, I object to that remark for the reason—

MR. SIMONS:

Oh, no, it has nothing—

MR. HIRSCH:

Let me finish my objection.

MR. SIMONS:

Before you finish the objection may I say it is not a question of imputing anything improper to anyone.

MR. HIRSCH:

It is allowable by law.

MR. SIMONS:

The Federal Government say you may do that.

MR. HIRSCH:

All right.

MR. SIMONS:

When I say "strategy", I say a matter of tax expediency, if that is a better word.

MR. HIRSCH:

And allowable by law.

MR. SIMONS:

Yes.

MR. HIRSCH:

All right.

MR. SIMONS:

What I am getting to is, it is not a matter of expense that I think can be chargeable here. It is a question of an arbitrary figure set up merely for the purpose of possibly saving tax on profits in the future, if there are profits.

MR. HIRSCH:

Well, if Your Honor please,—

MR. SIMONS:

Which the Federal Government permits them to do.

MR. HIRSCH:

If Your Honor please, I don't know whether you are familiar with this particular tax. If I recall, it came under the Agricultural Amendment Act—

THE COURT:

I know all about it. If there is an objection I will overrule the objection.

BY MR. SIMONS:

Q. That item was $1,732, that is the payment to the Federal Government, and you charged $432—

MR. SIMONS:

Your Honor is overruling my objection on that—

THE COURT:

Yes.

MR. SIMONS:

—particular item of expense?

THE COURT:

Yes.

BY MR. SIMONS:

Q. Incidentally, will you get your figures ready on the Social Security taxes that you have charged for $1,897.23? Show me how you computed that.

A. The Social Security taxes represented an amount of—this is for the year, now—

Q. Yes.

A. —$43,057.80.

Q. Now, when you say—

A. Which is the unemployment compensation, the company's share, and O. A. B. taxes, the old age benefits, $20,672.91. Those taxes are computed by the employees of the company. We don't go into the detailed items. We have no make-up of that, we accept their figures as being correct, and the item which we have charged against this particular period is predicated upon the total wages in that period, I think on the rate—whatever the prevailing rate was at the time, three per cent.

BY MR. HIRSCH:

Q. But it was only on the wages you paid during that period?

A. During that period.

Q. Not proportioned on the whole year?

A. No, sir, only on the wages paid during that period.

MR. SIMONS:

If Your Honor please, it is understood we haven't checked on the pay-rolls, but I am just taking them as they are given here.

THE COURT:

Yes.

BY MR. SIMONS:

Q. Do you have the figures there chargeable during this period?

A. Yes—you mean the wages?

Q. Yes.

A. Yes.

Q. All right, suppose you check this with me. Go ahead, what figures do you have?

A. Superintendence, six thousand dollars. Factory supervision—

Q. Now, just get these figures down. Jot them down.

A. Yes.

Q. Now, superintendence, you don't charge six thousand dollars?

A. No, it would only be up to one per cent on three thousand.

Q. And that—

A. And the other two per cent on the full six thousand. Want to split it?

Q. Now, wait a second, on the basis of the year —this is Mr. Struve's salary, is that right?

A. That is right.

Q. On the basis of a year how do you pay that Social Security?

A. That is paid monthly, I mean, on the basis—

Q. I understand.

A. —up to three thousand dollars. Then it discontinues after three thousand has been reached, with respect to the O. A. B.

Q. Three thousand dollars for what period?

A. Well, in Mr. Struve's case it would be whatever time it reached, up to the time where the total amount of three thousand dollars would be paid.

Q. Well, now, if he gets four hundred dollars a week, after eight weeks you don't charge any more—

A. That is correct.

Q. —Social Security?

A. That is correct.

Q. So, therefore, there is no charge on that six thousand at all?

A. All right.

Q. So we will deduct the six thousand dollars.

MR. HIRSCH:

No.

THE WITNESS:

No, that is only for the O. A. B.

MR. HIRSCH:

Let me get a ruling on this. If Your Honor please, I don't think it matters when the salary amount has come to a point where the tax stops.

THE COURT:

Oh, I don't, either. I don't think it makes a particle of difference.

MR. HIRSCH:

In other words, there is a salary for the year.

THE COURT:

That is right.

MR. HIRSCH:

There is a certain tax to be paid, and it is allocated.

THE COURT:

That is right.

MR. SIMONS:

If Your Honor please, you are not going to charge tax only for this particular period when he is paid all year?

THE COURT:

Mr. Hirsch is perfectly correct. It is an annual tax paid on a yearly salary.

BY MR. SIMONS:

Q. Well, set aside that three thousand dollars into one item, as to what payment is made to him. Keep that separate from the other figures, and then we will compute that proportionately.

Now, what is your next one?

A. Factory supervision, eighteen thousand.

Q. Do you have a list of the employees in your factory supervision?

A. Yes.

Q. Where is that list? Is this it (indicating)?

A. Yes.

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BY MR. HIRSCH:

Q. What was that figure, eighteen thousand?

A. Eighteen thousand—

BY MR. SIMONS:

Q. Now, wait, before you get to that figure, it is $3,264. that you are charging us here?

A. Yes, that is true, but we had to pay the Social Security taxes on the total wages paid.

Q. Well, we are going to figure out, we are going to figure out, if possible, the actual amount that you are charging here and what we are supposed to be charged with, and see if your figure is correct. Now, you are charging us here with $3,264.25.

A. Yes, but—

Q. Now, how many—is that the amount chargeable for the period of May 6th to August 19th?

A. Yes, but that was based upon the total eighteen thousand dollars, because we had to spend that money, because those people worked on repairing damaged machinery.

Q. You are charging here in this particular item $3,264.25. Now, we haven't explained that item yet or computed it, but that goes in to make up your total?

A. That is correct.

Q. That is correct, so, therefore, we are only concerned with thirty-two hundred dollars in this discussion.

MR. HIRSCH:

Just a second, if you please. When you say "You are charging us with thirty-two hundred", you mean that in the sum total, which

when proportioned to this period totaled $1,-897.23, there was originally charged this other, larger sum.

MR. SIMONS:

Mr. Hirsch,—

MR. HIRSCH:

We are only asking $1,897.23.

MR. SIMONS:

—he read into the testimony—oh, I am not talking about the Social Security. I am talking about the factory supervision you have here for $3,264.25. This is the figure that we are being charged with.

MR. HIRSCH:

Oh, well, I thought you were talking about the tax. Go ahead.

MR. SIMONS:

No, no, we will come to the tax after that.

BY MR. SIMONS:

Q. Now, can you give me the names of your employees, or the factory supervision? Do you know that?

A. Yes.

Q. Who are they?

A. Start with Hoch, down, from here, down (indicating).

Q. Now, Hock gets one hundred and seventy-five dollars a week, is that correct?

A. That is correct.

Q. Therefore, he comes above the three thousand dollar a year charge. Ludwig gets one hun-

dred dollars a week. Therefore, he comes beyond the three thousand dollars.

Herbert Ludwig, seventy dollars a week, also comes beyond the three thousand dollars.

Who is your next one, Leon Powell?

A. Whatever they follow there.

MR. HIRSCH:

If Your Honor please, I am going to interpose an objection, which I am doing for the purpose of saving time, and for the reason I think it is proper. If this witness testifies—and if he has not, I will ask him the question—that what we are asking reimbursement for represents a proportion of the exact sum that we actually paid out on these persons for Social Security and Old Age—

THE WITNESS:

Old Age benefits.

MR. HIRSCH:

Old Age benefits—then I don't think that the details that are being inquired into matter at all. In other words, here we are only asking to be reimbursed the proportionate share of the money we actually expended. The fact that one man's salary came up to three, and then from then on there was no Social Security tax, in other words, is absolutely irrelevant. If Mr. Simons wants to show we are asking for something we never laid out, I think he has a right to do that.

THE COURT:

No, all he can show is you may be asking for

a few dollars that you paid in excess of what you possibly had to pay. That is all I can see to it.

MR. SIMONS:

I think that is about twice the amount that should be chargeable with. I mean, I am doing that merely from a glance at the figures we have here.

THE COURT:

Why do you think that?

MR. SIMONS:

Because of the fact they have charged up an amount of money proportioned upon the total amount paid.

THE COURT:

I think they have a right to do that.

MR. SIMONS:

Yes, but they are charging us with specific items of labor during that period of time, and if we are chargeable with the tax we are chargeable with the tax on that particular labor.

THE COURT:

I think you are chargeable with the proportionate share of the total Security Tax paid during the year.

MR. SYME:

Well, how, Your Honor,—

THE COURT:

Well, gentlemen, what is the use of arguing? That is what I think. Now, I still think so, and I will think so—

MR. SYME:

Well, Your Honor, the Social Security tax is a tax—

THE COURT:

Don't argue.

MR. SYME:

—on pay-roll,—

THE COURT:

I didn't—

MR. SYME:

—and if we are charged, we can't be charged with a proportion of the pay-roll, we can only be charged with a proportion of those who actually worked.

MR. HIRSCH:

That is what he said.

MR. SYME:

The supervisory people, on the supervisory people we can pay only on the basis of the tax on their salaries.

MR. HIRSCH:

That is what he said.

MR. SYME:

And, therefore, the amount they get becomes pertinent.

THE COURT:

You go ahead and examine as fully as you want.

MR. HIRSCH:

Wait a minute, just a second, I may have

made a mistake. The tax is based on what was actually paid during that period.

MR. SIMONS:

No, it is not. No, it is not. That is the objection.

MR. HIRSCH:

Now, wait a minute.

BY MR. HIRSCH:

Q. Tell us how the tax is computed, and maybe we will all be straight.

A. The salary is based upon, as far as I can recollect at this late date, of course, that was done two years ago, but the best of my recollection is that it was based on the actual salaries and wages paid during that period, irrespective of what work was done, whether it was on repair work or whether it was on—whether they were home; as long as the salary was paid it was computed on that basis for those salaries and wages during that period from May 6th to August 19th, irrespective of what they did.

BY THE COURT:

Q. How often do you pay the Security tax?

A. Well, that is paid quarterly.

Q. Yes.

A. That is payable quarterly.

THE COURT:

Well, all right. Now, that is what he says. Go ahead, Mr. Simons.

BY MR. SIMONS:

Q. Now, all of your factory supervisors are

above the three thousand dollar a year amount in salaries?

A. Yes, sir.

Q. All right. Therefore, will you put down $3,264.25? Now, you have the three thousand down for—

A. What is your figure?

Q. $3,264.25. Now, indirect labor. Do you know whether or not they are over, above—

A. I would say they are all below, because they are mostly maintenance men.

Q. All below. Now, will you put that figure on a separate column, then, so we can get the full tax on that figure?

A. Well, you are going to get the full tax on these, too.

Q. I am dividing it now into those above three thousand and those below three thousand.

A. O. K.

Q. So we can compute our tax simpler.

A. $5,098.82.

Q. $5,098.82?

A. $5,098.82.

Q. Right.

MR. HIRSCH:

Will you pardon me just a minute? Mr. Ladenheim has a theory, and if Mr. Langer will sit down, if the two of them get together, if he is right,—

MR. SIMONS:

Perfectly all right, go ahead.

MR. HIRSCH:

Work it out with him, will you? We may

save a lot of time here. See what Mr. Ladenheim says about it.

THE COURT:

Are you pretty nearly through with this?

MR. HIRSCH:

This is the last item.

MR. SIMONS:

This is the last item. Of course, Your Honor, we haven't gone into the question of any of the labor items that have been left open.

MR. HIRSCH:

What labor items?

MR. SIMONS:

All of them. You didn't have the pay-roll here this morning.

MR. HIRSCH:

Oh, all right.

(Discussion off the record.)

MR. HIRSCH:

All right, if Your Honor please, I think we have saved a lot of time. Now, the accountants have gotten together. We worked out a realignment of this figure. Instead of claiming $1,897.23, we claim $930., a difference of $967.23 being disallowed. What is that item called, Social Security?

THE COURT:

All right, $967 of that item is stricken out. All right.

MR. HIRSCH:

$967.23. All right, that finishes that.

THE COURT:

Well, is there anything further? I guess we might as well stop; it is quarter of five. All right, we can adjourn.

Adjourned until Thursday, March 30, 1939, at ten o'clock A. M.

Philadelphia, Pa., March 30, 1939

Ninth Day

Plaintiff's Evidence (Continued)

THE COURT:

I think we are ready to proceed, gentlemen.

JOSEPH C. LANGER, recalled.

Cross Examination (Continued)

MR. HIRSCH:

We are trying to go over one item here.

THE COURT:

All right.

MR. HIRSCH:

That I think will save some time.

THE COURT:

All right.

MR. HIRSCH:

It won't be but a minute.

THE COURT:

All right.

MR. SIMONS:

If Your Honor please, in the matter of some of these items of salary, as I have said before, these are all going in over my objection, I don't believe that they are proper charges, in view of the fact that you have ruled that they may be admitted into evidence for consideration by the jury. I say on the question of superintendence, of six thousand dollars, the books undoubtedly indicate that that was paid and is the salary paid to Mr. Struve as superintendent, his complete and entire salary for that period of time.

THE COURT:

Yes.

MR. SIMONS:

I enter my objection to that as being a proper item of charge, a proper item to be admitted into evidence for the consideration of the jury.

THE COURT:

Well, I will overrule the objection.

MR. SIMONS:

There is an item of factory supervision of $3,264.25, and in order to save the time of Your Honor and the members of the jury, I have

checked the figures on that, and that money has been paid by them.

THE COURT:
Yes.

MR. SIMONS:
I also object to that as a proper item for admission into evidence, and I assume—

THE COURT:
I make the same ruling.

MR. SIMONS:
Same ruling.

THE COURT:
Yes.

MR. SIMONS:
There is also the item of Mr. Meyer's salary of $10,125. My thought there is exactly the same.

THE COURT:
Same situation.

MR. SIMONS:
Same situation.

THE COURT:
Same objection and same ruling.

MR. SIMONS:
That is right. There is one other item of indirect labor of $5,098.82 that I have not been able to check or been able to satisfy myself that that has been paid for that period of time and is chargeable to or is a matter that should

be admitted into evidence as possibly chargeable to the defendants.

MR. HIRSCH:

You are going to question him on that item now,—

MR. SIMONS:

Yes, if you—

MR. HIRSCH:

—or I will question further on it.

MR. SIMONS:

Well, I will question him.

MR. HIRSCH:

Go ahead.

BY MR. SIMONS:

Q. Now, you have a charge here of $5,098.82 as indirect labor. Will you explain just what that means?

A. That represents the wages of watchmen and maintenance men during that period of time who are not—who are not employed in doing any repairs to the plant or equipment.

Q. Do you have a schedule of that?

A. The schedule, we have it prepared here, but the details would be in the pay-roll records, we would have to support it by that.

Q. Well, how can you support that figure? That is what I want to know.

A. We can support it by the pay-roll records.

Q. Well, will you get the pay-roll records and see if you can support that figure?

MR. HIRSCH:

Where are your records of pay-roll?

BY MR. SIMONS:

Q. Is there any account that you carry on your books known as indirect labor?

A. No, sir.

Q. There is no allocation at any time of indirect labor?

A. No, sir.

Q. In your pay-roll account you do have an account for watchmen?

A. Not an account, but all wages are charged to an account termed "Wages".

Q. Well, will you show us how that five thousand dollars is made up? You have no—let me get this straight—you have no supporting schedule for it?

A. No supporting schedule.

Q. How did you arrive at this figure of five thousand dollars from the papers that you have? You have all your work sheets here?

A. Yes, sir. That represents the actual wages paid during that period of time.

Q. Well, how did you arrive at it?

A. By the actual pay-roll periods.

Q. Well, now,—

A. Actual amounts paid during that period of time.

Q. All right, refer to your work sheets and let me see how you arrived at a figure of five thousand dollars.

MR. HIRSCH:

In other words, what did you do, is that right, you mean, to arrive at that figure?

MR. SIMONS:

That is right.

BY MR. SIMONS:

Q. What did you do? What did you look at?

A. Actual pay-roll sheets.

MR. SIMONS:

Wait a second, I am asking him to look at his work sheets,—

MR. HIRSCH:

All right.

MR. SIMONS:

—and from his work sheets to let me know how he got the figure of $5,098.82.

BY MR. HIRSCH:

Q. What are you looking for, that sheet you had before?

A. Yes, the one I was looking at with Mr. Simons a minute ago. Here it is.

Q. Got it?

A. Yes.

BY MR. SIMONS:

Q. Now, wait a second. First of all, this is a summary of salaries and wages as of December 20th, period of examination December 31, 1937?

A. That is correct.

Q. That is correct. Now, you have marked down

here "direct" "indirect", factory supervision, shipping, and all the other items?

A. Yes, sir.

Q. Now, you have maintenance, under "indirect", maintenance, machinist, nurse. Now, how did you arrive at the five thousand dollars from that?

A. We took the whole—first of all, we started out with one hundred and twenty thousand, which is this amount here, after elimination of items of wages, maintenance men, paid in connection with repairing of damages to the plant and equipment. That left one hundred thousand dollars—$120,170.94—for the year. Then that amount—

Q. Now, wait a second. You have a total here of $104,195.82?

A. Yes, that is correct.

Q. Yes.

A. Yes.

Q. And then you added to that $15,975.12?

A. That is correct, that is right.

Q. Now, let me see your statement. Oh, how did you get this figure of $15,975.12? What does this $14,520.12 refer to?

A. That refers to the salaries and wages paid with employees used in connection with repairing the plant and equipment.

Q. Therefore, that is not an item for consideration here?

A. We have eliminated that item.

Q. And then the only other balance is 1455?

A. That is right. We have eliminated, may I have that schedule, please? In this $15,358.85—

Q. No, that is factory supervision. We are talk-

ing about indirect labor, now. That is $15,975. What is this figure?

A. This fifteen thousand here is part of this figure (indicating).

Q. In other words, you have allocated $15,975.12 as an item for indirect labor, or is that just for machinist? Which is it?

A. Under this whole group.

Q. Under this whole group, and that includes the nurse, the machinist, and the maintenance?

A. Yes, sir.

Q. Now, how did you, from this fifteen thousand dollar figure, how did you arrive at this five thousand dollar figure?

A. By—

Q. I know you subtracted, you subtracted ten thousand from the fifteen to get the five?

A. That is correct.

Q. Why did you subtract ten, and why is this five?

A. Because this ten thousand dollars—

Q. I want the supporting data.

MR. HIRSCH:

Let him answer, Mr. Simons. You keep asking questions and answering. Let him answer himself.

MR. SIMONS:

Listen, if we happen to think faster, I am sorry. He understands—

MR. HIRSCH:

I can't think any faster than the jury can hear. I want the answer.

MR. SIMONS:

The important thing is the explanation, and not the figures themselves.

MR. HIRSCH:

I object to the witness being asked a question and Mr. Simons immediately answering it for him.

THE COURT:

Yes.

MR. HIRSCH:

Now, ask the question and let him answer.

THE COURT:

You ask the questions, Mr. Simons.

BY MR. SIMONS:

Q. You have fifteen thousand. You have subtracted ten thousand from that, and there is five thousand balance which you claim is chargeable to this particular period?

A. Yes, sir.

Q. Now, will you show me how you arrived at that figure?

A. Which figure?

Q. That five thousand dollar figure.

A. I stated here, we have the total charge in here of $15,975.12, which is shown here as chargeable against this period, and we have eliminated from that amount the amount of $10,876.30, which represents wages paid to people who were used in connection with repairing the plant and equipment.

Q. Where are the schedules for that?

A. The schedules are here. You had them when

you examined it for the other charges that we made.

Q. You mean you didn't make up any list of the pay-roll that is applicable to this particular period?

A. No, sir, nothing else—

Q. And without making up a list or without making up a schedule you arrived at this figure of ten thousand dollars?

A. No, sir, that was made up figuring on the total wages paid for that period of time.

Q. Where are the papers from which you made it up? You didn't put down ten thousand dollars and throw away your working sheets. You must have had your working sheets somewheres to compute that figure.

Mr. Langer, let me ask, didn't you make an analysis of the pay-roll?

A. Yes.

Q. Is that what you want to explain?

A. We made an analysis.

Q. Now, do you have that analysis anywheres, of that pay-roll? You see what we are after.

A. Yes, well, if I may, Mr. Hirsch, can I speak to you a minute? The thing is, if I may be permitted to check it, I can find the item and give you the amount that is shown.

Q. Certainly.

A. That is, the deduction, but I can't give it to you offhand.

MR. HIRSCH:

You do anything that you have to do to get the information. Now, you go ahead and do it.

THE WITNESS:

It will take some time to get the information.

MR. SIMONS:

It is perfectly all right.

BY MR. HIRSCH:

Q. You mean you have to check back?

A. Yes.

BY MR. SIMONS:

Q. Let me ask you this, you would have to go through the pay-roll sheets now?

A. That is right.

Q. And make up the deduction of that ten thousand dollars?

A. Yes, sir.

Q. In order to show us how you arrived at it?

A. Yes, sir, and that would take some time to do that.

Q. Now, do you have any of the papers that you used in originally making up that deduction, when you made up the figures that you have there now?

A. I can't locate them here right now, but they were made up, and we have a schedule somewhere.

BY MR. HIRSCH:

Q. What was the sheet you had this morning?

A. That was on the salaries.

BY MR. SIMONS:

Q. That was an analysis of the complete salary account for the year?

A. Yes.

Q. And gave merely the totals?

A. Yes.

Q. It had no details or any breakdown?

A. We can support this figure, if I may be permitted the time to do it.

BY MR. HIRSCH:

Q. Let me ask a question. You have a total figure of some fifteen thousand dollars. That represents actual wages during this specific period for both repair purposes and non-repair purposes?

A. That is correct.

Q. Then you analyzed the pay-roll sheets to determine who was working on repairs, and eliminated that from the fifteen thousand?

A. I did.

Q. That, in round figures, was ten thousands?

A. Yes, sir.

Q. And the remaining five thousand was for indirect labor, which was not on repairs?

A. That is right.

BY MR. SIMONS:

Q. Now, wait, as a matter of fact, what you have there is this, you have a figure for the entire year of 1937?

A. That is correct.

Q. And after you have that whole figure for the year, you also have a figure showing what you claim is allocated, that fourteen thousand, five hundred, and fifteen hundred dollars?

A. That is right.

Q. Those two items?

A. That is right.

Q. Which you have added?

A. That is right.

Q. And then from those two items you have subtracted another figure?

A. Of ten thousand.

Q. Therefore, this has been an analysis of your pay-roll for the whole year?

A. And for that specific period.

Q. And then you brought it down to that specific period?

A. That is correct.

Q. We are still interested in knowing how you arrived at that specific figure.

A. You can arrive at it, but it would take some time to dig it out.

Q. Can you do it now?

THE COURT:

Oh, we can't suspend the trial to have that done.

BY MR. SIMONS:

Q. How long would it take to do it, do you know, Mr. Langer?

THE COURT:

He says he can do it.

BY MR. SIMONS:

Q. What?

A. I would say maybe an hour or so.

MR. SIMONS:

Would Your Honor want to pass that matter, then, and let Mr. Langer do it later on?

THE COURT:

Well, if you think it is worth while, yes.

MR. SIMONS:

Well, of course, personally I don't—I am going to object to it, it is to my advantage

not to do it. I would object to the item at the present time without any supporting data, unless Mr. Hirsch feels that he doesn't want to take the time to do it.

MR. HIRSCH:

Well, I won't waive that item. That is an item of actual expense. That is actual wages expended during that period.

BY MR. HIRSCH:

Q. Is that correct?

A. That is correct.

Q. You spoke of allocation. Is that a proportional allocation?

A. No, that was actual wages paid at that time.

Q. When you spoke of the total wages for the whole year, what has that got to do with this period from the standpoint of actual expenditures?

A. None.

Q. That is right.

MR. HIRSCH:

Well, I am willing that this witness when he is through on all other points, while we are examining other witnesses, should make this—

THE COURT:

Yes, better do it that way.

MR. HIRSCH:

—exploration for Mr. Simons, and we will support it. I won't waive any of it.

THE COURT:

Better do it that way.

MR. HIRSCH:

We will continue with something else.

BY MR. HIRSCH:

Q. You will do that when you are through?

A. I will do it, yes, sir.

MR. HIRSCH:

I have some other items to ask him about to pick up from yesterday.

THE COURT:

Well, I don't know whether the cross examination is through yet.

MR. SIMONS:

I think that is the only other item we have, if Your Honor please.

MR. HIRSCH:

Now, we are talking about these items, now.

MR. SIMONS:

When you complete these items I am not through with the cross examination, because we have the other phase of the examination, as to the profit and loss statement of the business, but as to these items, so the record will show some degree of continuity,—

THE COURT:

All right.

MR. SIMONS:

—Mr. Hirsch wants to follow it with some other things he has.

THE COURT:

Very well.

Direct Examination (Continued)

BY MR. HIRSCH:

Q. You were asked yesterday on an item of boarding forms, boarding form rentals, for which a claim is made of $1,913.52. Have you since yesterday gotten out the invoices and the actual payments for those rentals?

A. I have.

Q. Will you produce them? And what do they total, what were our actual payments?

A. Actual payments, $2,288.80.

Q. For this period I am talking of.

A. For that period.

Q. And we are claiming $1,913.52?

A. Yes, sir.

THE COURT:

Well, we want the original leases, also.

MR. HIRSCH:

Yes, we have those here.

BY MR. HIRSCH:

Q. What does the difference represent, error on our part, or explain the difference between what we are claiming and what the invoices show.

A. No, after allocating for the month of May and the month of August.

Q. Oh, I see.

A. Because it actually works out to $1,956.58, and we only claim $1,913.

Q. In other words, the rentals you spoke of totalling twenty-two hundred were for the total months of June, July and August?

A. Complete months.

Q. When you allocate it, it comes to $1,956.58?

A. That is correct.

Q. We have only asked $1,913.52?

A. That is correct.

Q. You have all the invoices there?

A. Yes, sir.

Q. And they were all paid, based on your audit of the cash accounts of the business?

A. They were.

Q. Now, will you produce the leases, please, for those? And were those invoices in accordance with the amounts called for in the lease?

A. I presume so.

Q. What do they amount to per month?

A. The amounts are there. I don't have the invoices.

MR. HIRSCH:

Here is the lease.

(The lease was produced for counsel.)

BY MR. HIRSCH:

Q. Do you know whether or not any rebates—I have been asked to ask you whether any rebates were given to the company for using so many forms, or was this the actual payments you made, without any returns?

A. They were the actual payments.

MR. SIMONS:

Do you want me to cross examine on each item as you are through with it?

THE COURT:

Yes, I think it would probably be a good idea.

MR. HIRSCH:
Go ahead.

Cross Examination (Continued)

BY MR. SIMONS:

Q. Now, the only lease on any boarding forms which you have is with the Paramount Textile Machine Company?

A. I presume so.

Q. Suppose you look it over. This is the lease which you had with them that sets forth the rate of twenty-five cents for a form, thirty-five cents for a stainless form, is that correct?

A. Yes, sir.

Q. Now, the bills that you presented to me are all the bills that you had in the file, going from the beginning to the end?

A. That is correct.

Q. Now, of course, we are not interested in the bills for January, February, March and April, is that right?

A. That is right.

Q. Now, this particular lease has nothing to do with the Universal Dye Works?

A. No, sir.

Q. No, sir, so, therefore, this has nothing to do with it, is that correct? Look at this bill (indicating)?

A. That is right.

Q. And we also have nothing to do with the Barsol Hosiery Finishers?

A. No, sir.

Q. This is a bill of October, so we are not concerned with that; this is December, November and December.

Now, you have a bill here of May 29th—do you want to jot these down and get these figures?—$572.20, and June is $572.20, July, $572.20. How did you allocate August?

A. On nineteen thirty-firsts. There was nineteen days.

BY MR. HIRSCH:

Q. And May the same?

A. Yes, sir.

(Discussion off the record.)

MR. SIMONS:

I think that takes care of this, then.

MR. HIRSCH:

Are these figures correct, or what?

MR. SIMONS:

Yes, they are correct. I wanted to make sure as to the other forms.

If Your Honor please, just not to hold it up, the only question is as to whether or not that lease has any statement in it as to use or non-use, and we will check through it. If there is anything there we will take that up a little later.

MR. HIRSCH:

We will go through it. Otherwise the item is correct?

MR. SIMONS:

The figures are correct, yes, sir.

MR. HIRSCH:

That was an item Your Honor excluded until I could prove it.

THE COURT:

I know.

MR. HIRSCH:

That is $1,913.52.

THE COURT:

I will not allow the item, and entertain a motion to strike it out if it appears to counsel that the lease releases payments during non-use.

MR. HIRSCH:

That is satisfactory, sir.

MR. SIMONS:

Of course, Your Honor, the objection you have noted at the beginning of the testimony goes along for this, too.

Direct Examination (Continued)

BY MR. HIRSCH:

Q. Now, you had an item yesterday which was temporarily excluded of shipping wages, $525. Do you have any specific information that enables us now to support that?

A. That item is included in this salary question that we were discussing a little while ago.

Q. You will take care of that?

A. That will be taken care of.

Q. During the recess?

A. Yes, sir.

Q. All right. Traveling expenses of twelve hundred dollars; have you analyzed that account and can you now tell us how that was arrived at?

A. Yes, sir. The item represents for the year,

Mr. Meyer, $3,900., and various miscellaneous traveling expenses of Mr. Steeple and others, which goes through petty cash, of $468.75, making a total for the year, $4,368.75. That was allocated on the period basis, that is, 105 over 365. In other words, we charged in there twelve fifty-sixths—we get a round figure of twelve hundred dollars. It actually works out to $1,256.85. We used twelve hundred dollars as a round figure.

Q. All right, now, then,—

THE COURT:

Well, I don't see how you can claim—

BY MR. HIRSCH:

Q. Then I don't know how you can allocate that. Can you determine this on an actual basis by going through your records?

A. Well,—

Q. Determine what actually was incurred for traveling expenses during that period?

A. Mr. Meyer received seventy-five dollars a week to cover traveling expenses.

THE COURT:

Oh.

BY MR. HIRSCH:

Q. And he received that during this period?

A. Yes, sir.

MR. HIRSCH:

Well, it will be up to us to support whether he used it, because, frankly, if he didn't use it we can't claim it, even though he received it.

THE COURT:

Well, why not eliminate it, then? I mean, I am not going to spend three or four days—

MR. HIRSCH:

All right, let's eliminate it for the present.

THE COURT:

—going back and forth on the thing.

MR. HIRSCH:

All right.

Cross Examination (Continued)

BY MR. SIMONS:

Q. Just to ask you one question, you said Mr. Meyer received seventy-five dollars a week for traveling expenses?

A. Yes, sir.

Q. Where is your schedule of this, from which we were reading before?

A. Which one do you mean, the salaries?

Q. No, that one—this is it.

A. Oh.

Q. Your wage schedule is the one I want. This is the summary for the year. You had another. This is it.

MR. SIMONS:

If Your Honor please, in view of what Mr. Langer says about the seventy-five dollars traveling expenses, we have been charged with seventy-five dollars a week in the matter of salaries—

THE COURT:
Oh, I don't—

BY THE COURT:
Q. Is that so?
A. Yes, but this seventy-five dollars is in addition, has nothing to do with salaries, this is purely traveling expense.

THE COURT:
Yes, that is what I thought.

BY MR. SIMONS:
Q. Well, does that represent this seventy-five dollars—
A. No, sir.
Q. —that you have charged here for officers?
A. No, sir.
Q. There is another item of seventy-five dollars?
A. Seventy-five dollars paid to Mr. Meyer for traveling expenses over and above the amount shown in salaries.

THE COURT:
Well, that is clear enough.

MR. SIMONS:
I want to check this item.

BY MR. SIMONS:
Q. Now, you have Mr. Meyer down here for $10,125?
A. Yes, sir.
Q. Does that include the seventy-five dollars traveling expenses?

A. No, sir.

Q. Is there a separate item of seventy-five dollars per week paid to Mr. Meyer as traveling expenses?

A. Yes, sir.

Q. Does that appear on your books?

A. Yes, sir.

Q. Will you show me where you have an item of seventy-five dollars per week to Mr. Meyer for traveling expense?

A. Yes, sir.

MR. HIRSCH:

Well, I won't withdraw this item if Mr. Simons is going to prove it.

MR. SIMONS:

It is not a question of my proving it.

THE COURT:

It is all right, if he does prove it I will reinstate it. I don't know whether it will result in it or not. The item has been withdrawn. I really don't see what is the purpose of going on.

MR. SIMONS:

Your Honor, what I am trying to check is this. We have been charged with seventy-five dollars a week,—

THE COURT:

Yes.

MR. SIMONS:

—and I simply want to check now whether

that is the same seventy-five or another seventy-five.

MR. HIRSCH:

The witness says, "No".

THE COURT:

Well, why don't you let your accountant look at the books? They are all here.

MR. SIMONS:

All right, may we? All right.

MR. HIRSCH:

You are through with that item?

MR. SIMONS:

Yes.

THE COURT:

All right, that twelve hundred dollars—

MR. HIRSCH

Is eliminated.

THE COURT:

—is finally eliminated. Now, go ahead.

Direct Examination (Continued)

BY MR. HIRSCH:

Q. Now, Pennsylvania capital stock tax, $2,720.60, is what we are asking. Since yesterday have you analyzed that account and can you support it with your actual expenditures?

A. Yes, sir.

Q. And do you have the capital stock tax returns and actual payments for this period?

A. Yes, sir.

Q. That, of course, necessarily would be on an allocated basis, would it not?

A. Yes, sir.

Q. And how much of the $2,720.60 can you support by your returns and actual expenditures?

A. The actual—it works out to $2,702.86.

Q. So we must amend, then, that item from $2,720.60 to $2,702.86?

A. Yes, sir.

MR. HIRSCH:

That is a deduction, Judge, of—I will have to figure that out.

THE COURT:

Well, that doesn't matter, that is all right.

MR. HIRSCH:

Deduction of $17.74.

THE COURT:

Yes.

MR. HIRSCH:

That is all on that item. Mr. Simons, do you want to ask any questions?

THE COURT:

Well, gentlemen, have you anything to say about it?

MR. SIMONS:

If Your Honor please, we are checking these figures now. What was the figure that you have?

MR. HIRSCH:

$2,702.86.

MR. SIMONS:

Well, the difference isn't very great. Just note the capital stock tax return—the reason for my taking time—the capital stock tax return was filed on a fiscal year, of June 30, 1937, and then for the balance on the calendar year, and I was just computing if there was any difference in taking it for the balance of the calendar year and half of the fiscal year, instead of just half of the fiscal year, as it was computed here. The difference is so slight that it doesn't make any difference.

MR. HIRSCH:

Well, this item is $2,702.86,

MR. SIMONS:

May we, however, object to this charge, if Your Honor please, more specifically, because of the fact this is not a question of operation. This charge is a charge that they would have to pay whether they were operating or not operating.

MR. HIRSCH:

That is just the point.

THE COURT:

Oh, yes, we agree to that, I understand that, but I will change the ruling striking it out, and I will permit it to go to the jury in the amount of $2,702.86.

BY MR. HIRSCH:

Q. Now, on the question of dues and subscriptions, for which claim was made of $1,743.03, have you analyzed that more fully since yesterday?

A. Yes, sir.

Q. Are you able to tell us what items go to make up that claim, and eliminate from your consideration any donations or contradictions that may have been made, but only consider the moneys that had to be expended by reason of membership in organizations and otherwise?

A. Yes, sir.

Q. And, then, tell us the amount of our claim on that.

A. Mr. Steeple, will you get those bills out?

Q. There you are. Are you ready?

A. Yes.

THE COURT:

Go ahead, please.

THE WITNESS:

The Full Fashioned Hosiery Association, the annual dues for the fiscal year ended August 31, 1937, that was prorated, and two hundred and thirty-nine dollars was—$239.20 was chargeable to the period.

BY THE COURT:

Q. All right, what is next?

BY MR. SIMONS:

Q. What is the total of the bills, Mr. Langer?

A. Why, $553.20.

THE COURT:

Go ahead.

THE WITNESS:

Next, National Association of Hosiery Manufacturers, that is annual dues for the

fiscal year ended 6-1-36 to 6-30-37—or, 5-31-37. That was $582.34, of which $93.16 was allocated to that particular period.

BY MR. HIRSCH:

Q. That is the year before. How about the following year, from '37 to '38?

A. And 6-1-37 to 5-31-38—

Q. Was how much?

A. We have allocated $309.66. The total amount of that bill is $1,411.27.

Q. Now, wait a minute, I don't understand. How could you allocate to a succeeding period the dues that were due for the preceding period?

A. Because on this period, 5-31-37, this other item didn't terminate until May 31, 1937, so there was a small balance in there, $93.16, on that old period, and then, of course, on the new item, the new item, 6-1-37 to 5-31-38, the total, I think, is $1,411.27.

Q. I see.

A. We allocated that portion to that period.

Q. All right.

A. $309.66. And then we had another bill there for a thousand dollars, of which we made an allocation, there was a thousand dollars, and we allocated $288. to this particular period.

Q. What is that bill for?

A. I think it is marked publicity fund.

Q. From what association?

A. That is the National Association of Hosiery Manufacturers.

Q. Do you know whether or not that represented an assessment? Does the bill show?

MR. SIMONS:

Just the publicity fund.

THE WITNESS:

And then there was another bill there representing assessments, I believe, for $825., of which that was allocated on the same basis, namely, $237.60 for this particular period.

BY MR. HIRSCH:

Q. And what is the total of our claim, therefore, for dues and subscriptions?

A. The total claim is $1,743.03.

THE COURT:

Well, is that satisfactory, Mr. Simons?

MR. SIMONS:

What was that, Your Honor?

THE COURT:

$1,743.03.

MR. SIMONS:

Well, I am checking the bills here.

THE COURT:

Gentlemen, let me speak to you a minute here. Now, the case can't go on this way. I am not going to permit it. Will you come up here?

MR. SIMONS:

Yes.

THE COURT:

We have got to arrange some method by

which our time won't be wasted in this fashion.

(Discussion at side bar.)

Cross Examination (Continued)

BY MR. SIMONS:

Q. Now, Mr. Langer, do you have any idea as to how these bills are made up, when you have a bill from December 1st, 1936 to May 31st, 1937 for $698.81?

A. You mean how it is made up?

Q. Yes, what is that for?

(The bill was shown to the witness.)

A. Nothing except what it states, specifically states on the bill. It says for semi-annual dues covering the period as stated on the invoice.

BY MR. SIMONS:

Q. You have another bill for $1,411.27. This is from the National Association?

A. That is correct.

Q. Now, who is the Full Fashioned Hosiery Association here in Philadelphia?

A. You say who are they?

Q. Yes.

A. I don't know.

Q. Do you know who the National Association of Hosiery Manufacturers are?

A. No, sir.

Q. Do you know whether it is a club or an organization,—

A. I do not.

Q. —or trade association?

A. I do not.

Q. Do you know anything about this Full Fashioned Hosiery Association here in Philadelphia?

A. No, sir.

Q. Do you know the purposes, aims, purports of this organization?

A. No, sir.

Q. Do you know whether it is a publicity organization, or whether it is a matter of just a social organization?

A. I do not.

Q. Well, there is no doubt that there was a publicity fund of two thousand dollars for which you were billed and which you computed as part of the charges?

A. That is correct.

Q. Do you know what this publicity was for?

A. No, sir.

Q. Now, you have computed—

THE COURT:

Well, now who does know? All right, Mr. Meyer. Will you stand aside a minute? Mr. Meyer, will you take the stand?

(Witness withdrawn.)

WILLIAM MEYER, recalled.

Redirect Examination

BY THE COURT:

Q. Now, will you kindly—you have been sworn—will you kindly tell us and the jury what your con-

tributions and dues are? What are these various associations?

A. The Philadelphia Association is chartered under the—or, was chartered under the State of Pennsylvania—

BY MR. SIMONS:

Q. What are its purposes, who were its members, and what did it do?

THE COURT:

Well, now, just a minute, the Court has called this witness.

MR. SIMONS:

Oh, I am sorry.

THE COURT:

I am asking the question.

BY THE COURT:

Q. Now, you go ahead and tell us.

A. It was an organization that was started, as nearly as I can remember, back in 193—

Q. Oh, we don't care about that.

A. —'4 or '5.

Q. What is the purpose of the organization?

A. Well,—

Q. What do you get for your money when you pay—

A. Generally, generally the work of the association, to take care of the interest of the manufacturers and the welfare of the general industry, of promotion—

Q. An ordinary trade association?

A. That is what it is, yes.

Q. What is the next association?

A. And the other one is the National Association, which is also an association, I believe chartered under the State of New York, if I remember correctly, and of which Mr. Constantine, who was here yesterday morning, is the president.

Q. Yes.

A. That is the regular trade, national trade association, taking in the entire United States.

Q. To promote the interests of the industry—

A. And the welfare.

Q. —in every legitimate way, I assume. Well, what is the contribution to the publicity fund?

A. Why, the contribution of the publicity fund was the amount of money asked for under an assessment, of which we paid our proportion.

Q. It is a regular assessment?

A. It was an assessment, special assessment made for that purpose.

Q. Was it a voluntary contribution or an assessment?

A. It was an assessment.

Q. Part of your dues?

A. Yes, sir.

THE COURT:

All right, now, was there any other item there?

Recross Examination

BY MR. SIMONS:

Q. Well, you have an item here for an assessment on April 15, 1937 for $825.

A. That is right, assessments were made regularly at the time of the board of directors meeting, and these assessments were made.

THE COURT:

All right.

THE WITNESS:

I happen to know that because I was president of the association at that time and sat in those meetings when those assessments were made.

BY MR. SIMONS:

Q. You paid your regular dues of $825.?

A. That is correct.

Q. And paid an assessment of $825.—

A. That is correct.

Q. —on April 15, 1937?

A. That is correct, yes.

Q. And on May 22nd, 1937 there was a publicity fund of two thousand dollars. What was the publicity for?

A. It wasn't used for publicity fund. It was used for the regular expenses of the association.

Q. But you marked it "Publicity fund"?

A. Well, it wasn't used for that purpose.

MR. SIMONS:

If Your Honor please, I don't believe that these are items that are chargeable in the regular course of business to this thing.

THE COURT:

I think they are all properly chargeable in the regular course of business, and I will overrule your objection and allow the items.

Now, that is all, Mr. Meyer. Let's go on.

JOSEPH C. LANGER, recalled.

Direct Examination (Continued)

BY MR. HIRSCH:

Q. The next item, Mr. Langer, is an item of general expense, $728.53. That is an allocated sum based on the general expense of the business throughout the year?

A. Yes, sir.

THE COURT:

How much is that, and where is it?

MR. HIRSCH:

$728.53.

THE COURT:

I don't seem to have that. Was that objected to yesterday?

MR. SIMONS:

Yes, it was, if Your Honor please.

MR. HIRSCH:

Yes, we withdrew it temporarily.

MR. SIMONS:

It was allocated out of general expense for the year and objected to.

THE COURT:

$728.53?

MR. HIRSCH:

Right.

BY MR. HIRSCH:

Q. What does that represent?

A. It is just miscellaneous items of expense, just minor items.

Q. Well, do you know whether they were incurred during this period?

A. As an allocation made.

Q. As an allocation made?

A. Yes, sir.

THE COURT:

Well, then, you can't tell.

MR. HIRSCH:

I think you ought to withdraw it.

THE COURT:

Strike it out.

MR. HIRSCH:

Strike it out.

THE COURT:

Here it is, that is all right.

MR. HIRSCH

General expense, $728.53.

THE COURT:

I see where it is now. Now, that is out. Now, go ahead.

MR. HIRSCH:

Now, that leaves one item, heat and light. Will you come down and let Mr. Steeple take the stand? We have been working on this item, trying to break it down.

THE COURT:

Very well.

MR. HIRSCH:

Just stand aside. You aren't through with cross examination yet.

(Witness withdrawed.)

MILTON S. STEEPLE, recalled.

Redirect Examination

BY MR. HIRSCH:

Q. You have been sworn, Mr. Steeple. At my request have you worked on the item of heat and light since yesterday?

A. I have.

Q. And are now in a position to support by actual payments made during the period of May 6th to August 19th some figure for heat and light?

A. I am.

BY THE COURT:

Q. Now, that is all we want to know. How much was actually paid for heat and light during that period, or, rather, for heat and light used during the period May 6th to August 19th?

A. Well, the bills rendered in those periods totaled $3,749.10.

THE COURT:

Well, that is more than you claim.

MR. HIRSCH:

That is right. Well, that is because we have now got it on an actual basis.

THE COURT:
$3,749?

THE WITNESS:
$3,749.10.

THE COURT:
All right, cross examine, please.

Recross Examination

BY MR. SIMONS:
Q. May I see it?
A. Here is the schedule.
Q. Where is this $1,123.45, from August?

(Witness indicated the item.)

BY MR. SIMONS:
Q. Now, you have one bill from April 28th to June 2nd?
A. Yes.
Q. $875.93?
A. Yes.
Q. And you charged through the full amount in your computation of that figure?
A. Correct.
Q. And there is no breakdown that you have from May 6th?
A. Not down to May 6th. It isn't possible to do that with that bill.

THE COURT:
Well, gentlemen, to be absolutely on the safe side I will take a thousand dollars off that, and won't submit it to the jury, and allow it

in the amount of $2,084.46, so there can be no question whatever about it.

MR. HIRSCH:

Then you are taking off seventeen hundred.

THE COURT:

No.

MR. HIRSCH:

It was $3,749.10.

THE COURT:

Oh, that is so. Well, then, I will allow it in the amount of $2,749.10.

MR. HIRSCH:

All right.

THE COURT:

Strike out a thousand dollars of that. Now, there can't be any possible question about the rest. You go ahead and examine as long as you want.

MR. SIMONS:

Now, I just want to check—

THE COURT:

I just want to keep this safe, and it is not particularly scientific, but it is reasonably accurate. In the long run that is where we are going to get.

I am also going to take a thousand dollars off the insurance item, because of the fact that the workmen's compensation insurance in the amount properly allocated is probably less to some extent owing to the deduction of payroll, but I don't think there can be any ques-

tion about a thousand dollars being on the safe side there, so that will be allowed in the amount of $1,195.10.

MR. SIMONS:

My objection goes to that. Just so the record is straight, you mean that is admitted into evidence? It is not a question of allowance, you feel that that is an admissible item?

THE COURT:

Oh, yes, I think it is an admissible item—

MR. SIMONS:

So we get it straight.

THE COURT:

—to the extent of $1,195.10. In fact, I think it is admissible to considerably more than that, but I think that that allows for any possible inclusion of too much compensation insurance, and I think the same is true with regard to the light proposition.

MR. HIRSCH:

Well, that leaves only one item, then. Come down, Mr. Steeple.

THE COURT:

There is a slight overlapping there, there is a little more than there should be, but it isn't as much as that.

MR. HIRSCH:

That leaves one item, then, two items, of five thousand, on that wage item, and shipping wages, some fifty-six hundred dollars in wages which were actually expended.

THE COURT:

I don't know what the five thousand wage item is.

MR. SIMONS:

Indirect labor.

MR. HIRSCH:

Indirect labor.

THE COURT:

Well, I didn't do anything about that, did I? That is the one you are going to come back on. I haven't ruled on that?

MR. HIRSCH:

All right, that completes all the items that are open.

THE COURT:

$3,672 of mill supplies has been ruled out.

MR. HIRSCH:

Correct.

THE COURT:

$83 of factory expense is withdrawn.

MR. HIRSCH:

$83.32.

THE COURT:

.32?

MR. HIRSCH:

$83.32.

THE COURT:

All right, $97.43—now, some of you accountants get your pencils out and let's take

these down as we go along and add them up, so we see where we stand.

Now, the following items the Court rules are not supported by sufficient evidence and will not be submitted to the jury, out of the total claim for overhead of $122,742.95. They are, first, $3,672.58 of mill supplies.

MR. SIMONS:

Now, that is taxes and water rent, if Your Honor please.

MR. HIRSCH:

No, that is right, it is mill supplies.

THE COURT:

I think it is mill supplies,—

MR. HIRSCH:

$3,672.58.

THE COURT:

—unless I am way off.

MR. SIMONS:

Yes.

THE COURT:

All right. $1,000 of the item of insurance; $1,000 of the item of heat, light and power; $83.32—

MR. HIRSCH:

Pardon me, sir, you can't do it that way.

THE COURT:

Yes, I can.

MR. HIRSCH:

Instead of a thousand, it is $335.36 from the original figure.

THE COURT:

This is what I am disallowing.

MR. HIRSCH:

Will you increase the figure from three thousand to thirty-seven hundred?

THE COURT:

What is the use?

MR. HIRSCH:

The actual deduction is only three hundred and thirty-five from what we originally asked. We increased it to thirty-seven hundred.

THE COURT:

All right, I will deduct—$3,749.10—I am deducting a thousand dollars from that claim. Now, don't fuss about it.

MR. HIRSCH:

All right.

THE COURT:

Don't fuss about these figures.

The item of general factory expense which we had of $83.32, which has been withdrawn; the item of rental—oh, yes, that is to be subject—wait a minute—that is subject to a check-up; the item of freight $97.43, withdrawn; the item of shipping wages of $525; the item of traveling expenses of $1200—

MR. HIRSCH:

Pardon me, the shipping wages will be in that other item of wages. Those two together we are coming back on.

THE COURT:

All right, don't put that in your list.

Item of telephone of $241.39, the item of legal and accounting, a part of that item amounting to $538.28; amount of office expense, item of $309.61; the item of postage, I guess it is, of $337.34—what is this $728 item?

MR. HIRSCH:

General expense.

THE COURT:

General expense, the amount of general expense, item of $728.53; and a Social Security tax item amounting to $967.23. Now, those items the Court is ruling are not supported by sufficient evidence. Add them up, will you, please?

There are two more items that will be ruled on when the comparisons are made. They are the boarding forms of $1,931.52, shipping wages of $525., and what is the other item, indirect labor of how much?

MR. HIRSCH:

Well, the boarding forms, sir, was admitted.

THE COURT:

No, no, he was going to see whether there was anything in the lease—

MR. HIRSCH:

Oh, no, I will tell you now, there is nothing in the lease. You can allow that.

THE COURT:

All right, then, that is admitted, then, don't bother with it. That is admitted.

Well, then, the only thing left for checking up is $525 shipping wages?

MR. HIRSCH:

And $5,098.82.

THE COURT:

And $5,098.82.

MR. HIRSCH:

From fifty-six hundred, and to save tir .e on that, if you want to end it, I will agree to a figure of four thousand, if they want to do it.

THE COURT:

Is that satisfactory?

MR. HIRSCH:

They are actually wages expended.

MR. SIMONS:

What is that?

MR. HIRSCH:

Fifty-six hundred to four thousand. Let's get rid of this.

THE COURT:

Then we eliminate how much of the claim? I have to do it by subtraction.

MR. SIMONS:

If Your Honor please, I think the allowance ought to be more than that.

THE COURT:

All right, go ahead, prove it, then.

MR. HIRSCH:

Then prove it. We won't allow anything.

THE COURT:

Go ahead, don't allow anything, that is all right. How much is that?

THE WITNESS:

I figure $10,175.71.

THE COURT:

Total deductions by the Court are—

MR. LADENHEIM:

I have figured $10,175.71.

MR. HIRSCH:

You both agree, all right.

THE COURT:

$10,175.71, those are the present deductions made by the Court, and the thing to be further considered is this one item of indirect labor.

MR. HIRSCH:

All right, that concludes the items, and you have further examination?

THE COURT:

Well?

MR. SIMONS:

In order to complete this whole thing, suppose we just let that labor item go, instead of taking up all the necessary time.

THE COURT:

Eliminate sixteen hundred dollars of it, then?

MR. SIMONS:

All right, let it go at that. We won't waste any more time.

THE COURT:

All right, then, he eliminates sixteen hundred dollars more of the labor item.

MR. HIRSCH:

$11,775.71.

THE COURT:

$11,775.71?

MR. HIRSCH:

Deducted.

THE COURT:

Now, that is the total amount as to which the ruling now is that it is not supported by sufficient evidence. The balance of the claim will be submitted to the jury.

MR. HIRSCH:

I will give you that figure in a moment, sir —$110,947.26.

THE WITNESS:

967.

MR. HIRSCH:

967?

THE WITNESS:

.24.

MR. HIRSCH:

$110,967.24.

THE COURT:

Well, you will understand, of course, members of the jury, that the defendants in this case did not agree to that figure, but the Court rules that that figure is supported by sufficient evidence for you to pass upon it and determine whether it is a correct figure or not.

This all has to do, what we have been talking about now all has to do with what we will call the overhead expenses of the business which were properly chargeable against the period of May 6th to August 19th, during which the plaintiff claims that the plant was shut down by the defendants. In other words, these are items of loss, these are items which the plaintiff says had to be spent anyhow, and as the plant was not working, they were a dead loss for that period. They were not producing anything, and nothing was coming back during that period. That has not anything to do with the item of loss profits, which is the next one we are going to get to. This is the item of what we call dead loss from continuing charges that had to be paid to keep the business in existence during the period when they could not operate.

MR. HIRSCH:

Now, then, do you want to recess?

THE COURT:

Yes, I will now recess for ten minutes.

(Recess at 11:30 A. M.)

After Recess

Present: Counsel as before noted

Plaintiff's Evidence (Continued)

JOSEPH C. LANGER, recalled.

Cross Examination (Continued)

BY MR. SIMONS:

Q. May I see your statement for 1937 for which you have computed the profit and loss as of May 6th, 1937?

THE COURT:

Well, now, as I understand it, so far no figure of lost profits has been given. All he has testified to is the experience of the prior six months or so.

MR. SIMONS:

That is right.

MR. HIRSCH:

He has given the profit for the period January 1st to May 6th.

THE COURT:

Yes, which was an average of $6,111 a week, and twenty-seven cents a dozen.

MR. HIRSCH:

And a total in dollars of $110,575.50.

THE COURT:

Yes.

MR. HIRSCH:

Based on hosiery operations alone.

THE COURT:

The only thing he hasn't given us is the percentage of profit per dollar of gross sales.

BY THE COURT:

Q. Have you got that?

A. No, I haven't. I can figure it out.

Q. Well, it is easy enough to figure it out. Well, do that some time.

A. O. K.

Q. Let's get somebody to do it. The total profits were $110,575.50, on $2,284,262.08. Now, will you give me the profit per—

MR. LADENHEIM:

Slightly less than five per cent.

THE COURT:

What?

MR. LADENHEIM:

Slightly less than five per cent.

MR. HIRSCH:

Around five per cent.

THE COURT:

All right. Go ahead, now.

BY MR. SIMONS:

Q. May I see your statement—not your work

sheets; do you have your printed statement, or typewritten report?

(The witness produced the statement.)

BY MR. SIMONS:

Q. This is the report for the six months ended June 30, 1937?

A. Yes, sir.

THE COURT:

May I ask a question, whether this was all available to counsel for the defendants, or was it not?

MR. SIMONS:

No, sir, this was not.

THE COURT:

What?

MR. SIMONS:

This was not.

MR. HIRSCH:

All of the books were available to counsel for the defendant. The accountant's report was not available to the accountants for the defendant.

THE COURT:

All right, now, will you go ahead as rapidly as you can, Mr. Simons?

What figure did you get?

MR. LADENHEIM:

4.83. I didn't check it, but I think it is correct.

THE COURT:

What?

MR. LADENHEIM:
4.83.

THE COURT:
All right, about 4.83 cents.

MR. HIRSCH:
Per cent, yes, that is per cent, not cents

THE COURT:
Well, same thing, per dollar—

MR. HIRSCH:
That is right.

THE COURT:
—of gross sales.

BY MR. SIMONS:
Q. You had your sales of $2,284,262.08; they were the gross sales, were they not?
A. Yes, sir.
Q. Therefore, the net sales were $2,245,702.89?
A. That is correct.

MR. HIRSCH:
What was that figure?

MR. SIMONS:
$2,245,702.89; difference of $38,559.19.

MR. HIRSCH:
That will increase the percentage of profit per dollar.

THE COURT:
Well, on net sales, yes. Well, it doesn't make much difference. It doesn't matter as long as

you carry the same figure through in the shutdown period whether it was gross or net.

BY MR. SIMONS:

Q. Now, in your statement you have figured your depreciation for the six months period on your buildings, machinery and equipment, and you have allocated here four thousand depreciation on building, $4,061.40, and $27,883.33. That covers up to the period of June 30th?

A. That is correct.

Q. You have another figure of depreciation which you added to your statement later?

A. No.

Q. I mean, this is not the figure you used for the depreciation on the other statements?

(Discussion off the record.)

MR. HIRSCH:

You better stay there and let Mr. Simons show you these figures, so you know what he is talking about.

BY MR. SIMONS:

Q. And in making up the statement you show no expense for boarding form rentals and expense from May 7th to June 30th?

A. That may be possible.

Q. May 7th to June 30th; why wouldn't you?

A. Because,—

Q. It is only a small item, but why wouldn't you put it in?

A. The reason for it is that the bills for the period came in afterwards, I mean, they weren't paid until subsequently, but they covered those particular months. In other words, when we made up the an-

nual statement those bills had been paid and covered those particular months that we had reference to.

Q. Well, now, you carry your books on an accrual basis?

A. Yes, but that item wasn't accrued at the time.

Q. Well, that would mean, certainly, a decrease in the amount of expense and a decrease in the amount of your profits for that period of time?

MR. HIRSCH:

This was for subsequent to May 6th, and this profit figure he has given is for the period up to May 6th.

THE COURT:

Oh, well, it is only a few hundred dollars out of two million, two hundred and eighty-four thousand dollars. It is so slight—

MR. HIRSCH:

Doesn't enter into it.

THE COURT:

—it is absolutely de minimis. I won't hear any more evidence about it. It isn't worth talking about.

BY MR. SIMONS:

Q. Now, you took no actual inventory at the time on June 30th?

A. As of June 30th, yes.

Q. Was there a physical inventory taken at that time?

A. Some time in July, but as of June 30th.

Q. Now, do you have the figure of the inventory on January 1st and also on June 30th?

A. I believe the inventory figures are here.

Q. You have the inventory figures?

A. Yes, sir.

Q. Now, according to this statement—let me ask you, before I come to this, your dye house operations are run entirely separate and distinct from the hosiery business, is that true?

A. They are.

Q. And your statement is made up separately for that?

A. It is.

Q. And your computations are—that is, the one hundred and ten thousand includes the profits made on both of these items?

A. There is no profits in the dye house operations.

Q. Well, what do you mean, there are no profits in the dye house operations?

A. The actual cost of dyeing is charged to the Apex Hosiery Company at the actual amount of money expended.

Q. In other words, where you have $53,035.67—suppose you let me understand this.

A. Yes.

Q. You show here $53,035.67. Now, that is chargeable where?

A. $53,035.67—

MR. HIRSCH:

Keep your voice up and put it on the record.

BY MR. SIMONS:

Q. That is chargeable as part of the manufacturing expenses?

A. Manufacturing expense.

Q. Now, this profit and loss statement for that period of time shows the net profit for the six months ending June 30th of $56,546.65?

A. That is correct.

Q. That is, you are deducting here the charges that you are making from May 7th to June 30th?

A. That is correct.

Q. And do you have the statement of the business for the year 1936?

A. I don't have it here.

MR. HIRSCH:

What do you want, the total volume?

MR. SIMONS:

No, I want the statement. You had it here yesterday.

THE WITNESS:

I don't have it here. It may be down there, but I don't have it here.

BY MR. SIMONS:

Q. Let me see your capital stock reports. Do you have your general ledger here?

A. Yes, sir.

Q. That will reflect the profit and loss statement, will it not?

A. Yes, it will.

MR. HIRSCH:

You want to know the profit and loss for 1936?

MR. SIMONS:

That is right.

THE WITNESS:

Oh, we have that.

BY MR. SIMONS:

Q. You have your profit and loss for '36 here?

A. I mean, I have the figures here.

Q. Well, that is all right.

(The ledger was produced.)

THE WITNESS:

I just have the sales. I don't have the profit. I thought I did, but I don't.

BY MR. SIMONS:

Q. You don't have that. Let me have your capital stock reports that you had before. Let me have the one for the previous year.

A. This is July 1st, '36. That is the fiscal period.

Q. Now, in preparing the capital stock report you show the profits or losses for a period of five years,—

A. Yes, sir.

Q. —is that correct, and then you average what your profits or losses are over that period of time?

A. That is correct.

Q. Now, these figures are exact figures from your books and records of the company?

A. They are.

Q. They show the actual assets, the net income or loss for that period of time?

A. They do.

Q. And the amount of dividends paid?

A. Yes, sir.

Q. The only thing we are concerned with is the question of the profits or losses. Now, referring to this statement that you had filed, capital stock report that you filed in 1936, you carried your books at that time on a fiscal basis ending June 30th?

A. No, the books were always closed—had been closed for the last—I don't know how many years, but for a good number of years, on a calendar year basis, but the State return was filed on a fiscal year basis.

Q. But the profits or losses would reflect the profits or losses for that period of time?

A. For what period of time?

Q. For the fiscal year.

A. For the five years?

Q. June 30th to June 30th.

A. That is correct.

Q. Now, it shows in 1936 there was a loss of $184,896.33.

MR. HIRSCH:

Is that the calendar year or is that the fiscal year?

THE COURT:

Fiscal year.

MR. SIMONS:

The fiscal year. Well, I thought it might be simpler to take it that way, because you have a half of a year.

THE COURT:

All right, it doesn't matter.

MR. SIMONS:

We are computing it.

BY MR. SIMONS:

Q. Now, 1935 shows a loss of $149,223.40?

A. May I see that?

Q. Yes, certainly.

A. Yes, that is correct.

Q. 1934 shows a loss of $372,713.04?

A. That is correct.

Q. 1933 shows a loss of $344,874.84?

A. That is correct.

Q. Now, this is the results of your losses sustained during those fiscal years?

A. Yes, sir.

Q. And in 1937, for that six months period, it is only a six month period which you reported,—

A. Yes, sir.

Q. —you reported $68,938.62 as a profit?

A. That is correct.

Q. That is correct.

MR. HIRSCH:

Is that for the year from June to June, or is that the last six months?

MR. SIMONS:

No, that is for the—

THE WITNESS:

No.

BY MR. SIMONS:

Q. No, that would be for your year?

A. That is for the year.

Q. That is for the year?

A. Yes.

Q. That covers from June 30, 1936 to June 30, 1937?

A. That is right.

Q. That is correct, isn't it?

A. That is right.

Q. So, therefore, that whole year showed a profit of sixty-eight thousand dollars?

A. Yes.

Q. Right. Now, there is a fluctuation of the amount of business that is done in the several months of the year, is there not?

A. There might be a fluctuation.

Q. Yes, by that I mean there are peak months and then there are lean months during the course of a year, they don't all average the same?

A. That is correct.

Q. And in your experience, as a rule, aren't June and July and August leaner months from the point of view of sales than, let us say, March, October, November?

MR. HIRSCH:

How about September?

A. I would say the peak period, the peak period of sales is around July—

THE COURT:

That is not the question. The question is whether June, July and August are lean months compared to the months of March, November—

MR. SIMONS:

December.

THE COURT:

March, October and November.

MR. SIMONS:

Yes.

MR. HIRSCH:

Is it a question of sales or shipments?

THE COURT:

Question of sales.

MR. SIMONS:

Sales.

THE WITNESS:

I couldn't answer that off-hand, unless I referred to my records.

THE COURT:

Well, refer to your records. What is the fact, gentlemen? You ought to know that. You are all in the hosiery business.

MR. HIRSCH:

The fact is June and July are the biggest months for sales during the year.

THE COURT:

All right.

MR. HIRSCH:

Because it is during those two months that you sell for the rest of the year.

THE COURT:

All right, then, let's go into it.

BY MR. SIMONS:

Q. Do you have your sales, sales records here?

A. Yes, sir.

Q. Where are they?

A. Sales book.

MR. HIRSCH:

Now, I am going to object to this cross examination at this time, for several reasons. First, examining on the sales for the subsequent period has as yet no relevancy until we produce testimony to that effect. In other words, it is not proper cross examination. This man has not been asked in direct examination anything about sales after the period of May 6th. I did try to get in our profit and loss for the period of May 6th—

THE COURT:

Are you going to ask him—

MR. HIRSCH:

—to the end of the year, and that was refused.

THE COURT:

Are you going to ask him about the sales? Is this witness all through? In other words, are you going to ask him—

MR. HIRSCH:

No, I am not going to ask him. I am going to put Mr. Meyer on for sales. This witness is the auditor.

THE COURT:

I understand. Are you going to ask him to make an estimate of profits during the shutdown period?

MR. HIRSCH:

After Mr. Meyer has testified.

THE COURT:

Yes, well, then, I—

MR. SIMONS:

My purpose is to show, Your Honor, not the question of sales afterwards, as much as to show that there is, while the witness is on the stand and has the books and records, that there is a variance in the months.

THE COURT:

Well, we agree to that. Everybody knows that. You can't tell exactly the same amount of hosiery in each month.

MR. SIMONS:

Yes, I know that there is very much less in certain months than in others, according to analysis.

THE COURT:

Well, I will hear that much of it. It ought to be a very simple matter to establish what are your peak months.

MR. HIRSCH:

Well, I thought—the reason I am objecting is that I want to ask it in my way, through the man who does the selling.

THE COURT:

Mr. Meyer?

MR. HIRSCH:

Mr. Meyer

THE COURT:

What difference does it make? Establish it any way you can. The figures are down there. There must be figures there.

BY MR. SIMONS:

Q. Where is the transfer ledger?

THE COURT:

If you haven't got the figures ready, go on to something else. We are not going to spend five minutes looking for them. Go on to the next question and do it later. Don't spend any more time on this. I thought you had them here.

MR. SIMONS:

I have the analysis of them here. I wanted to check it.

THE COURT:

All right, let me see it.

(Discussion at side bar.)

BY THE COURT:

Q. Now, this is a sales record I am reading. It says sales record. Isn't that a sales record? Is that sales or shipments?

A. I didn't make that.

THE COURT:

Who made it?

THE WITNESS:

Mr. Ladenheim.

MR. SIMONS:

Is that sales or shipments?

MR. LADENHEIM:

That is shipments.

THE COURT:

That is not a sales record. What is the use

of bothering with it? Take it away. He has got it marked "sales record".

MR. LADENHEIM:

It is the sales account of the ledger.

THE COURT:

Well, it is actually shipments. Now, if you have anywhere a comparative statement showing the sales made month by month let us have it now. If you haven't got it—

MR. SIMONS:

Well, may I say this, Your Honor, there is no record kept of sales made because they are entered in the books, and that is a matter of bookkeeping, as to whether they are entered when the order is received or whether they are entered when they are shipped. Now, I don't know how they do it.

BY MR. SIMONS:

Q. How do you keep your sales records?

A. They are entered in this sales book in detail.

Q. When?

A. Daily.

BY THE COURT:

Q. As the sales are made?

A. As the sales are made.

Q. All right, then, you will be able to get that this afternoon?

A. Yes, sir.

THE COURT:

Go ahead.

THE WITNESS:
I can get it very shortly.

BY MR. SIMONS:
Q. And the sales in this book would be entered the days the sales are made?
A. Not the—
Q. The total would be entered—
A. At the end of the month.
Q. At the end of the month?
A. Cumulated in this record and entered at the end of the month.

MR. SIMONS:
Well, then, this would be the record taken from their books.

MR. HIRSCH:
Of the shipments—

THE COURT:
Well, will you please go on to another item and let this one go until we get that testified, is that correct? He is going to be recalled—

THE COURT:
Oh, well, we will take care of that—

MR. HIRSCH:
All right.

THE COURT:
—as it arises.

MR. HIRSCH:
All right.

THE COURT:

It isn't important. Now, go ahead, gentlemen.

WILLIAM MEYER, recalled.

Direct Examination

BY MR. HIRSCH:

Q. Mr. Meyer, before we get into the purpose for which I am calling you, reference was made yesterday in the examination of Mr. Langer to the New York office, and he was asked questions which he couldn't answer, but I want to ask you the same questions. You have a New York office?

A. Yes.

Q. And there was expense charged in the records of the Apex as to which Mr. Langer testified?

A. That is right.

Q. And he was questioned about a mill up at Spring City of some other company as having some part of that sales office, and therefore implying that that sales office expense should be shared in some way. During the year 1937 did any other company occupy that office for any reason whatsoever?

A. No. The company referred to had its own office in the Empire State Building. The other one is down at the Fifth Avenue Building, 200 Fifth Avenue.

Q. The other one; you mean the Apex office.

A. That is right, the Apex office.

Q. Yes, and did any employee in the Apex office work for any other company or do any other work other than Apex business?

A. Not to my knowledge.

Q. You hope not?

A. I hope not.

Q. And the rent you paid for the office was solely for the use by Apex?

A. That is correct.

Q. All right. Now, Mr. Meyer, are you familiar, thoroughly familiar, with the women's full fashioned hosiery industry in the year 1937?

A. Yes.

Q. And you have heard reference made to the National Association of Hosiery Manufacturers?

A. Yes.

Q. And I think until Mr. Constantine was withdrawn from the stand he said that it comprised about eighty-five per cent of the mills of the country?

A. Mill production.

Q. Production?

A. Of the full fashioned, and about seventy some odd per cent of the seamless.

Q. You are only in the full-fashioned end?

A. Yes.

Q. My questions that I am going to ask you only relate to full fashioned hosiery.

A. Right.

THE COURT:

Now, let me ask you something before you go on. Are you going to endeavor to show, or are you going to apply the percentage of profit to a larger volume of business than was

done during the preceding six months? Now just answer my question, see if we can't get somewhere.

MR. HIRSCH:

I can't—

THE COURT:

In other words, do you expect—do you expect to ask the jury to allow you five per cent profit—we will say it is five; 4.83—on a larg business than the average business shown during the six months preceding May 6th?

MR. HIRSCH:

During the four months preceding.

THE COURT:

Well, whatever it is.

MR. HIRSCH:

No.

THE COURT:

No.

MR. HIRSCH:

I intend to—

THE COURT:

Well, then, isn't all this rebuttal testimony? Don't we start with the presumption, isn't it a fair presumption until it is contradicted, that the business will continue the same as it was during the first four months of the year —that is all you are going to ask for—and do you need any testimony as to the state and condition of the business? If the business ran into depression, or there were some extra-

ordinary reasons that you would not do that business, isn't that a matter of defense? It would seem so to me. Aren't you proving more than you are required to prove?

MR. HIRSCH:

I may be doing that, yes, sir. I mean, some of the cases indicate that I need not do any more than show the profit during the immediate preceding period,—

THE COURT:

Well, that is what I—

MR. HIRSCH:

—and for the defense to show—

THE COURT:

That is what I would think.

MR. HIRSCH:

But I am perfectly willing to meet the burden of inquiry by a few general questions of this witness, and I would like to do that. I think the jury would be entitled to that, rather than my arguing merely on a presumption. I would prefer to do it this way, sir. I am assuming a burden—

THE COURT:

Well, I know.

MR. HIRSCH:

It won't take very long.

THE COURT:

Well, what does the defendant—

MR. HIRSCH:

I think the jury is entitled to it.

THE COURT:

What does the defendant say about it? Do they want it done this way, too?

MR. KATZ:

We think—

THE COURT:

If everybody wants it proved this way I am not going to—

MR. KATZ:

We think, if Your Honor please, if they attempt to prove anticipated profits the burden is upon them to show they would have anticipated in the future the same amount of business as for a reasonable time in the past.

THE COURT:

Then you want him to prove it the way he is doing it?

MR. KATZ:

I do.

THE COURT:

All right. Well, then, I won't be the only one to object, but still I don't think it is necessary.

BY MR. HIRSCH:

Q. Now, what position did you occupy with the National Hosiery Association, the National Association of Hosiery Manufacturers?

A. In 1937?

Q. Yes, in 1937.

THE COURT:

Now, then, you said it was going to be a few general questions.

MR. HIRSCH:

All right.

BY MR. HIRSCH:

Q. You are a member of the board?

A. Yes.

MR. HIRSCH:

Let me lead him on this.

A. (Continued) By the fact I was a past president of the association.

BY MR. HIRSCH:

Q. Prior to 1937 you were the president of the association?

A. Prior to that, yes.

Q. Now, were you thoroughly familiar with conditions in the hosiery industry, and if so, how did you acquire that familiarity?

A. Why, through my connections with the National Association and through the local association, and through my contact with my accounts.

BY THE COURT:

Q. Do those associations collect statistics?

A. Yes.

MR. HIRSCH:

I am coming to that.

BY THE COURT:

Q. And publish them?

A. Yes, sir.

THE COURT:

All right.

BY MR. HIRSCH:

Q. The National Association collects statistics for women's full fashioned—

MR. KATZ:

I can shorten this. We will admit Mr. Meyer is excellently competent to testify to conditions in the industry. The Association issues statistical bulletins that everybody in the industry uses—

THE COURT:

All right.

MR. KATZ:

—to show the—

MR. HIRSCH:

May I use this bulletin for the year 1937?

MR. KATZ:

I object to the competency of the testimony, if that is to be used. The issue is the business to be anticipated by this business, and not generally by all other hosiery manufacturers.

THE COURT:

Yes, I am inclined to think so. I think he

can testify, if you want to, that there was nothing in the industry which would indicate a discontinuance of the same rate of business, or a depression, but I don't think that you can put in those figures, because they don't really bear on this particular industry.

BY MR. HIRSCH:

Q. What was the general condition of the hosiery industry in 1937 as compared to other years and as applied to your business?

A. Much better.

Q. Much better?

A. Very greatly improved, in fact.

Q. Greatly improved over 1936?

A. Yes.

Q. And the volume of business which you were doing in 1937 was equal to, higher than, or less than the volume you had been doing in 1936?

A. Higher than 1936.

Q. And the seasons of the year—

BY THE COURT:

Q. That is—wait a minute—the business for the first five months was higher than the comparable five months of '36?

A. Yes, sir.

THE COURT:

All right.

BY MR. HIRSCH:

Q. Now, there are two seasons of the year, are there not? Spring and summer is one, and fall and winter is the other?

A. That is correct.

Q. When do you do your selling—not shipments—selling, for your fall and winter season?

A. Fall and winter season, why, we do that during June and July.

Q. Now, during the year 1937 were you able to accept any business or take any orders during the months of June and July?

A. No.

Q. Why not?

A. Because of the sit-down condition, and the factory closed down, and the demolition of the place.

BY THE COURT:

Q. When did you stop taking orders?

A. Why, we were taking orders up to the last day, of May 6th.

Q. Up to May 6th?

A. I mean, we were filling orders.

Q. Did you stop on May 6th?

A. We couldn't take any more orders, we had to turn everything back.

Q. Yes.

A. So advised our salesmen and all our accounts.

Q. And you took no orders from May 6th to August 19th?

A. No.

BY MR. HIRSCH:

Q. Based on your knowledge of the hosiery industry at large, based on your knowledge of your own business, based on the amount of busi-

ness you did during the first period of January 1st to May 6th, 1936—1937—are you able to form an opinion as to the amount of business you could have secured in the months of June and July for shipment during the last six months of 1937?

A. Yes.

MR. KATZ:

Now, that is objected to—oh, I beg your pardon, I beg your pardon.

THE COURT:

The next question, don't answer.

MR. HIRSCH:

Don't answer the next question.

BY MR. HIRSCH:

Q. What in your opinion would have been the amount of business that you could have secured, in so far as whether it would exceed, equal, or be less than the same rate of business you did during the first four months of the year?

MR. KATZ:

That question is objected to, if Your Honor please. There is no proper foundation, and the opinion of this witness is inadmissible on a question of this kind.

MR. HIRSCH:

He is the most qualified person of all to testify, if Your Honor please. He knows the industry. He was in the business. He knew what he had been doing, and he knows what the situation was in June and July, and I can

think of no one more qualified to say what amount of business he could have done.

THE COURT:

Well, I don't believe that is the way to prove it, though. I think all you want from this witness is that there were no conditions in the industry which indicated that—or, which operated to depress the industry during that period. That is a fact proposition. He can testify to that.

MR. KATZ:

That is right.

THE COURT:

Then the jury forms their own conclusion. I will permit him to be asked that, but I will sustain the objection—

MR. HIRSCH:

All right.

THE COURT:

—as to—

BY MR. HIRSCH:

Q. Based on your statement that the sales for shipment during the last six months of the year are made in June and July, will you tell us whether or not there was any change in the condition of the industry during those months which would have indicated to you, or which did indicate to you—

THE COURT:

"or which would operate to".

BY MR. HIRSCH:

Q. —or which would operate to prevent you from having secured business—

THE COURT:

That is it.

BY MR. HIRSCH:

Q. —during those months which would have enabled you to ship during the period, the last period of the year, an amount of hosiery equal to the amount that you did before—

THE COURT:

Oh, you have got the question so long, it is all right where you stopped the first time to take breath, if you had just stopped there the whole thing would have been all right. Now, read the first part of that sentence, Mr. Rodebaugh.

MR. HIRSCH:

I will redraft the question.

THE COURT:

Read the first part. It is all right just as you asked at first, without going into the long statement afterwards.

(The question was repeated by the Reporter, as follows:

"Q. Based on your statement that the sales for shipment during the last six months of the year are made in June and July, will you tell us whether or not there was any change in the condition of the industry during those months which would have indicated to you, or

which did indicate to you or which would operate to prevent you from having secured business—")

BY THE COURT:

Q. —having secured business during that period.

A. No, there was nothing there which would have prevented us securing our business for the balance of the season during that period.

Q. Nothing in the condition of the industry had changed,—

A. No.

Q. —or any special factor operating in the industry?

A. No.

THE COURT:

All right.

BY MR. HIRSCH:

Q. And would the rate of business done by you from May 6th to the end of the year have been the same as that which you did during the first four months, in your opinion, if you had been permitted to operate uninterruptedly?

MR. KATZ:

Objected to.

THE COURT:

Well, that is the same thing. You have met the situation all right. I will sustain the objection. It is a question of the fact testimony, and the jury draws their own conclusions.

MR. HIRSCH:

Read me the question and answer again, please.

(The question was repeated by the Reporter, as follows:

"Q. Based on your statement that the sales for shipment during the last six months of the year are made in June and July, will you tell us whether or not there was any change in the condition of the industry during those months which would have indicated to you, or which did indicate to you. * * * or which would operate to prevent you from having secured business—"

"BY THE COURT:

"Q. —having secured business during that period.")

MR. HIRSCH:

Well, now, if Your Honor please, I think I must—at least, I desire to go further; not just secure business, but at what rate would you have secured the business. I think is a proper following question. I think the jury would want to know whether he would have got the same amount of business as he formerly enjoyed, less or more.

THE COURT:

Well, he says there was no change in the industry which would have prevented him from securing—

MR. HIRSCH:

What was his answer?

(The answer was repeated by the Reporter, as follows:

"A. No, there was nothing there which would have prevented us securing our business for the balance of the season during that period.")

BY THE COURT:

Q. Well, that is your normal business,—

A. Yes.

Q. —as gauged by the first six months?

A. That is correct.

THE COURT:

Well, all right.

BY MR. HIRSCH:

Q. As gauged by the first four months.

A. Four months—well, even six months, we had sufficient business already booked—

Q. You had some business booked on May 6th?

A. No, we had sufficient business booked in the first six months' period, which carried us along into July—.

THE COURT:

Well, I know, but we are talking about four months.

MR. HIRSCH:

Yes, all right.

BY MR. HIRSCH:

Q. Now, was there any change in the price level of goods sold during the months of June and July for shipment during the balance of the year 1937 over the price levels that existed for the same merchandise which you sold during the first four months of 1937?

A. No, there was not. We had went right through with our spring price list into the fall with the same prices.

Q. And was there any—

BY THE COURT:

Q. Was that true of the whole industry at large, the whole hosiery industry?

A. Yes.

Q. What?

A. That is correct, yes.

Q. Yes.

BY MR. HIRSCH:

Q. And in so far as your total costs of producing and selling the merchandise are concerned, would they have been the same, higher, or lower during the last six months as compared with the first six months?

A. They would have been about the same.

Q. There was some increase in labor cost toward the end of the year?

A. That is right, but to offset that there was a reduction in raw material, and especially silk, which is our main proposition, of about twenty cents a pound.

Q. So that the total—

A. It would about average out.

Q. So that your total costs, the costs of producing and selling, would have been the same?

A. That is correct.

Q. And, therefore, whatever profit you made during the first four months would have continued during the balance of the year—

A. Yes, sir.

Q. —if you had been permitted to operate?

A. Yes, sir, absolutely.

Q. And, therefore, just to get a mathematical figure on the record, if the profit, as has been testified to by Mr. Langer, was $6,111 per week, that would have continued throughout the year?

A. Yes.

MR. KATZ:

Objected to.

THE COURT:

Well, I sustain the objection, but we are all going to make the calculation ourselves. It is a mere matter of form.

BY MR. HIRSCH:

Q. Now, instead of making a profit during the last eight months, what in fact was the result of your business operations for that entire period of May 6th to December 31, 1937?

A. What do you mean, as to loss?

Q. Did you make any money at all?

A. No, no, of course not. In fact, we lost all we made in the first—

Q. Well,—

A. —period, and some.

MR. HIRSCH:

I don't think it is necessary to prove what we lost,—

THE COURT:

No.

MR. HIRSCH:

—just as long as we show there was no profit to offset this calculated profit.

BY THE COURT:

Q. There was no profit, there was a loss?

A. Yes.

Q. The business was conducted at a loss?

A. At a loss, yes.

BY MR. HIRSCH:

Q. Now, Mr. Meyer, as a result of your inability to manufacture and ship merchandise following May 6th, by reason of the sit-down strike, and so forth, damage to the plant, can you tell us whether or not you lost any customers who were previously on your books as regular customers for a considerable period of time prior to May 6th, 1937?

MR. HIRSCH:

Don't answer until Mr. Katz makes his objection.

MR. KATZ:

That is highly objectionable.

MR. HIRSCH:

That goes to the question of good will, sir.

THE COURT:

I think it is extremely speculative. I don't like to inject it into the case. It really would mean, wouldn't it, apart from the question of the speculative feature, wouldn't it mean that counsel would have to go into each particular customer,—

MR. KATZ:

Yes.

THE COURT:

—and the motives that—

MR. KATZ:

That is right.

THE COURT:

—persuaded him to cease doing business?

MR. HIRSCH:

We are prepared to show that.

MR. SIMONS:

If Your Honor please, may I also point out this, that the cases hold you must seek one or the other of the remedies. In no case do they permit both methods of procedure, and it was pointed out in the Sea Green case that they have to prove it by the particular customer, and in that case there was no discussion of profits.

THE COURT:

What was the case you are talking about?

MR. SIMONS:

That is the Sea Green case, 229 Fed. 77.

MR. HIRSCH:

That was a case where they sought loss of profits—

MR. SIMONS:

Now,—

MR. HIRSCH:

—because of cancellation of customers—because of loss of customers. In this case we are merely seeking to show in addition to the loss of profits that we lost customers who were not regained on our books of a very considerable amount, and we will have, of course, to leave it to the jury whether or not that rep-

resented an item of damage for which we can make recovery.

MR. SIMONS:

Well, if Your Honor please, they are asking for that very thing when he says that the business would have continued as it had in the first six months, and those customers, therefore, would have continued buying; therefore, he is asking for that very thing in the element of profits.

THE COURT:

Oh, no.

MR. HIRSCH:

No, I am not.

THE COURT:

This element if it is allowed goes far beyond the period of shut-down, you see.

MR. HIRSCH:

Sure; goes into '38, '39.

THE COURT:

It may be now that they are suffering.

MR. HIRSCH:

That is what we are going to prove.

THE COURT:

There is no question, there is no question about the fact that there is undoubtedly some loss there. The only question is whether it is one of those things that is so highly speculative that it is just not susceptible of proof. I am not ready to say as yet. Suppose we—

MR. HIRSCH:

I would like to produce it, and then you can strike it if you think—

THE COURT:

Well, let's see what the decisions are. Let's recess now and talk it over. It is only five minutes to recess time. It is probably an item of some importance, and I don't question that a shut-down of that kind undoubtedly—everybody knows that—causes loss of customers, but the thing is, can you prove it? Is it more than a guess as to why this, or that, or the other man—

MR. KATZ:

That is right.

THE COURT:

—ceased to do business with this company? That is the difficulty in the thing.

MR. HIRSCH:

Well, Judge, I am perfectly willing that if we cannot prove it to your satisfaction, to the point that it ought to go to the jury, that we will then have to have it removed from the consideration of the jury, but I can't prove it until I have shown the evidence that I have.

THE COURT:

Well, take this situation. Suppose you put a man on the stand, a customer, and he said, "Well, we used to buy Meyer's stockings, but we couldn't get them in this period, and we bought Smith's, and then we found Smith's were so much better than Meyer's that we

stayed with Smith." Now, is Meyer entitled to damages there? Because they might have found that fact out entirely independently—

MR. HIRSCH:

Now, I would say no, but if the testimony is that we have made other satisfactory connections and that they don't want to change—

THE COURT:

I am only pointing that out to illustrate the speculative nature of the evidence that is going to be offered.

MR. HIRSCH:

Well, may I discuss it?

THE COURT:

For instance, "Why didn't you go back to the Apex Hosiery Company?"

"Well, we were better satisfied with the service, and the stockings, and the prices we were getting somewhere else." There are all those items. It might have been that some salesman would have come in and gotten that customer away on May 7th, you can't tell.

MR. HIRSCH:

Well, suppose we discuss it with you for a few minutes.

THE COURT:

Oh, yes. It is a speculative feature that I hesitate about putting in. All right.

(Recess, 12:25 until 2 o'clock P. M.)

After Recess

Present: Counsel as before noted.

Plaintiff's Evidence in Rebuttal (Continued)

WILLIAM MEYER, recalled.

Direct Examination (Continued)

THE COURT:

Go ahead.

MR. HIRSCH:

Based on our conference in chambers, I will ask Mr. Meyer, and then we will raise the issue that way:

BY MR. HIRSCH:

Q. Did you lose any customers as a result of this strike whom you have never been able to regain and whose loss was occasioned directly by reason of the fact that you could not produce and ship for that period that you were closed?

MR. KATZ:

That is objected to, if Your Honor please, as incompetent.

THE COURT:

Of course, the way the question is asked it really begs the question that it can be proved.

My point that I referred to in the discussion about this is that while there is undoubtedly some damage there, it is not susceptible of proof to the extent that it won't still remain speculative thereafter.

MR. HIRSCH:

Well, let me raise it by an offer of proof. I offer to prove that we lost certain business which affected our good will, and as to that item I would like to adduce proof at this time.

MR. KATZ:

And I object to that on the ground that it is speculative, contingent, and inadmissible.

THE COURT:

Well, when you add to that that "affected your good will", you don't really add anything to the offer. Then what you are offering to prove is, as I understand it—and if I am not correctly stating it, you tell me—that certain customers during the period when Apex was unable to fill orders went to other manufacturers to fill their requirements, and that after Apex got into a position where they could fill orders these same customers did not come back to them, but remained with other manufacturers as customers of theirs?

MR. HIRSCH:

Yes, I offer to prove that in support of the item of good will.

THE COURT:

Yes. Well, the Court is of the opinion that it introduces an element which is too remote and

speculative. It seems to the Court that it would be practically impossible to show without going into the issues in each particular case, how and why the customers, or for what reason these customers declined to come back or did not come back to Apex. There are so many things involved in it that it all becomes a guess, and I can refer to the general discussion that we had on the record this morning before we adjourned. It would be very difficult to say that the only reason that influenced them was the fact that Apex was unable to fill orders at a certain period. In other words, as was suggested, it may have been that the new connections they made were more satisfactory. It may have been that they would have been made anyhow. We all know that there is keen competition among manufacturers. Salesmen of these other competitors may have reached them regardless of whether Apex was filling their orders or not, and may have been able to get them away. The fact that Apex subsequently became a closed shop may have had something to do with it. It may have been something in the quality of the goods themselves. It may have been a matter of price. It may have been a matter of what we generally call service, advertising, all those elements come in, and I do not think it would be possible for the jury to say how long or for what period the shut-down was responsible for loss of business of that kind, and, therefore, I will sustain the objection.

BY MR. HIRSCH:

Q. Now, Mr. Meyer, you testified that the busi-

ness which you take for shipment during the last half of a year is taken during June and July. As a result of your being unable to accept or book any business during June and July of 1937 did that put you out of the market completely for the balance of the year?

A. Yes, with the exception of just a little "spot" business.

Q. And in other years would you book your last half of the year's shipments in June and July?

A. Yes.

Q. And in other years would you only have a very small amount of "spot" business?

A. Yes.

Q. Will you tell us something about the nature of your clientele in so far as this booking ahead is concerned, the method, the basis on which your business has been built?

A. Well, we do our business all on a wholesale basis, dealing principally with jobbers and other manufacturers, and branded line people, and they place their business in bulk for delivery over the advance period designated for the months in the following season, and the main reason for doing that is because of the price guaranteed, the responsibility of our company, the flexibility of making merchandise, and the right to service them in the proper way and take care of the details, and also to make goods according to their specifications all the way through.

Q. And that is the method of the conduct of your business?

A. Yes.

Q. And the basis upon which it has been built?

A. Yes. And then, of course, by placing this busi-

ness in advance, they don't have to worry about the color change or a different season proposition, because we will dye in any given color they want, any shade, any time they want. In other words, we give wide service and put them in a position where they feel absolutely at ease and feel safe to buy merchandise into the future.

Q. Now, do you have a large or small clientele, and is that an oft-changing one or a constant one?

A. Why, our customers are remarkably small for the size of business we do.

Q. Small in number, you mean?

A. Small in number. I don't think at any time we have more than about—well, I mean, at the extreme we have less than a hundred customers on our books.

Q. And are they constant in their—

A. Constant, yes, sir, because, as I say, we build up merchandise for specifications which go out into the branded fields and the different fields, and the merchandise must always be of the same material, and invariably these people will not change unless they are forced to change, because they feel the assurance that they must send out uniform merchandise to their consumers.

Q. And in 1937, when you were unable to take any orders from those customers during the months of June and July for shipment over the balance of the year did they place their orders and business elsewhere?

A. Yes, they did.

Q. And were you able to hold those orders during the year of 1937, or did you lose them all?

MR. KATZ:

I object to that.

THE COURT:

This is a little different. This is not a question of their not returning. This is a question of their —as I understand you—orders that normally would be placed during the months of June and July.

MR. KATZ:

Oh, it is limited—

THE COURT:

Or, May 6th to August 19th.

BY THE COURT:

Q. That is what we are talking about, isn't it?

A. No, I am talking about the fall season.

Q. No, what I want to do is confine this to the orders that normally would have been placed during the period from May 6th to August 19th.

A. Well, in that June and July period, they would naturally place orders during that period and all the way up to the end of the year.

Q. Yes.

BY MR. HIRSCH:

Q. For shipment, you mean, to the end of the year?

A. That is right.

BY THE COURT:

Q. But the orders would be placed largely during that period?

A. During June and July.

Q. Yes.

BY MR. HIRSCH:

Q. And when you were unable to accept their orders you didn't receive them either for shipment during that year?

A. Yes, after you miss the boat, it is over, I mean, they have to place their orders.

MR. HIRSCH:

Cross examine.

A. (Continued) You could only get small filling orders.

Cross Examination

BY MR. KATZ:

Q. Mr. Meyer, you manufacture a non-branded product, don't you?

A. Yes, as I explained to you, we manufacture for the wholesale trade.

Q. Yes.

A. And for the various brands that exist in the United States.

Q. It is a non-branded product; there is no branded name?

A. They aren't named. When I ship them out, the brands are put on there—

BY THE COURT:

Q. Well, do you make—

A. —they aren't personally branded.

Q. That is what I mean, they aren't identified as your manufacture?

A. Well, with small exceptions.

Q. Small exceptions?

A. Yes.

BY MR. KATZ:

Q. Now, you are a member of the Full-Fashioned Hosiery Manufacturers of America, Inc., isn't that correct?

A. Yes, since I signed the agreement with the union.

Q. That is right. Now, that is an entirely different organization of hosiery manufacturers, isn't it?

A. In what respect?

Q. It differs from the National Association of Hosiery Manufacturers, and it differs from the association of which you were a member prior to the strike?

A. Well, the only difference I would know of, that they act under contractual relations with the union.

BY THE COURT:

Q. Well, but it is not—that body that he mentions is not any of the bodies that have been already mentioned?

A. Oh, no, that has not been mentioned as far as I know.

THE COURT:

All right.

BY MR. KATZ:

Q. Mr. Meyer, that association of hosiery manufacturers is the collective bargaining agency on behalf of all of its members, including the Apex Hosiery Company, isn't it?

A. Under contract, yes.

Q. And they have rules and by-laws too, don't they?

A. Yes.

Q. And under the rules and by-laws you authorize and delegate them to bargain with the union on wages, rates and working conditions?

A. That is correct.

Q. Now, during the month of December, 1937, did the Full-Fashioned Hosiery Manufacturers of America, Incorporated, of which you were a member, present a claim to the union for a reduction in wages?

A. Yes, they did.

Q. And did they base that claim upon the fact that during the last six months of the year 1937 there had been a precipitous drop in business amongst their members?

A. That may be true, but that didn't affect us.

Q. You are a member of that association?

A. Yes, I am a new member of that association.

Q. At that time you were a member of it, is that correct?

A. When was this?

Q. When this claim was made.

BY THE COURT:

Q. December, say, along in December of 1937.

A. Yes, since I signed the union—the contract with the union.

BY MR. KATZ:

Q. Subsequently there was a hearing before a wage rate tribunal, wasn't there, Mr. Meyer?

A. Yes, right.

Q. Did you participate in the presentation of testimony before that wage rate tribunal?

A. I think I was present, yes.

Q. Yes. Now, I show you a document and ask you whether you ever saw that.

(Brief on Behalf of the Full-Fashioned Hosiery Manufacturers of America, Inc., was shown to the witness.)

A. Yes.

BY MR. KATZ:

Q. Yes, and that is the brief, is it not, which was submitted to the wage rate tribunal under the union contract?

A. Yes.

Q. In an effort by the association to obtain for and on behalf of its members a reduction in wage rates.

MR. HIRSCH:

Submitted when, Mr. Katz?

MR. KATZ:

Submitted to the wage rate tribunal in February, 1938.

A. That is right.

BY MR. KATZ:

Q. That is right, and I was a member of the tribunal, wasn't I?

A. Yes.

Q. Yes. Now, I refer you to page 18 of this document and ask you to explain that chart—or, tell us, first, what the chart is.

MR. HIRSCH:

I object to this witness being asked a question on anything in connection with any brief

that was presented to any wage tribunal unless it is shown that he prepared it; and, secondly, I object to it unless it is shown that it in any way affected his business. His testimony was that this in no way affected his business.

THE COURT:

Well, I know that, but that is a matter for the jury to say. I will overrule the objection. It appears that he was a member of the association and was present and testified.

BY THE COURT:

Q. Is that correct?

MR. KATZ:

Participated, he said.

A. Participated.

BY THE COURT:

Q. Participated; and the brief was filed in behalf of you as well as the other members of the association? You didn't dissent from anything in the brief, did you?

A. Yes, I did.

Q. What did you dissent from?

A. Well, I mean, there was quite a discussion on the brief prior to it being submitted.

Q. But it was submitted. Did you dissent before the tribunal?

A. No, no.

Q. All right.

A. I was also present—

MR. HIRSCH:

I object to this witness being asked a question on that brief,—

THE COURT:

It is proper cross examination, I think.

MR. HIRSCH:

—unless—

THE COURT:

No, I will permit it.

MR. HIRSCH:

All right.

THE WITNESS:

Well, this here is a chart—

MR. HIRSCH:

May I see what you are showing him? I haven't seen it.

MR. KATZ:

Yes, I am sorry. I don't have another copy.

(The brief was shown to Mr. Hirsch.)

BY THE COURT:

Q. While you are waiting, can you give me a list or a statement of the orders placed or taken by Apex from August 19th up to December 31st? It is not in evidence.

MR. KATZ:

No.

BY THE COURT:

Q. Now, you can give me that, can't you?

A. Yes, I can about tell you what that is. I think the orders taken amount to about one hundred and seventy-five thousand dozen of goods, if I remember.

BY MR. KATZ:

Q. Didn't you do over a million and a half—

A. Well, we had some back orders—

MR. HIRSCH:

We can give it to you.

THE WITNESS:

Yes—one hundred and twenty-five thousand.

THE COURT:

Let me have a month by month statement of orders taken by Apex from August 19th to December 31st, just in dollars, I think would be best—well, dollars and dozens. I guess it is easy to give us both.

BY THE COURT:

Q. What is the total capacity of your plant when it is running—suppose you have all the orders you could possibly fill, what would you turn out in a month?

A. Over a hundred thousand dozen of goods.

Q. A month?

A. A month, yes, sir.

Q. Go ahead.

A. One hundred and five: it depends, you know, it all depends on the days of the month.

Q. Well, one hundred to one hundred and five is near enough, isn't it?

A. Oh, yes.

BY MR. KATZ:

Q. Well, all right, to hasten the examination, Mr.

Meyer, this chart was prepared by your association for submission, and you are now proceeding to explain the meaning of it.

A. It says "Percentage of increase or decrease in shipments during each month of 1937 with respect to corresponding month of 1936."; this chart, compiled from information obtained from statistical bulletins relating to women's full fashioned silk hosiery, issued by the National Association of Hosiery Manufacturers.

Q. Yes, and it compares the two years, doesn't it?

A. Yes, I think—now, wait a minute, where is that?

Q. Here (indicating).

A. Yes.

Q. Yes. Now, this reflects shipments, doesn't it?

A. That is what it says, yes.

Q. Now, when they say that in February, 1937, shipments were approximately thirty-one per cent more than it was in the month of February, 1936, that would refer to orders taken during what period of time?

A. Those goods were—those goods were taken along about November, December, I imagine, of the year previous, for delivery in the future.

Q. I see.

A. I mean, that would apply in our case.

Q. That is right. Now, when it shows—when it shows shipments during the month of May and June, 1937—and that is an increase over 1936 of ten to twenty per cent—those orders were taken when?

A. In our case they would have been taken—

Q. Would have been taken at what period?

A. —before the end of the year for the spring season.

Q. That would still be orders taken about five or six months prior—

A. That is about right.

Q. —to the date of shipment?

A. That is about right.

Q. Now, merchandise that is ordered during the months of June and July would, therefore, be delivered during the months, I assume, of October, November, or December?

A. That is right.

Q. That is correct?

A. Well, I mean during that fall period.

Q. Now, this chart shows a precipitous drop starting with the month of June from a high of twenty-one per cent to a low at the end of July of about three per cent over 1936, is that correct?

A. That is what this chart shows, yes.

Q. And from then on it drops, and about the middle of October it goes below 1936, until at the end of the year it hits sixteen per cent below—

A. Yes.

Q. —the business done in the comparable period of time during the year 1936, is that correct?

A. That is what it shows here.

Q. Now, that business of shipments during that time would reflect orders taken during what months?

A. What periods is that you are speaking about?

Q. This dropping period.

A. This June and July business?

Q. No, the shipments of the latter part of the year,—

A. Well,—

Q. —fall and winter.

A. Well, they would be taken in June and July.

Q. June and July?

A. Right.

Q. So that this chart shows that business was not taken during June and July in the same amount as it was taken in June and July of the preceding year?

A. Well, this only talks about shipments in—

BY THE COURT:

Q. No, no, but you see, that is just what he is making out. Let me show you. Doesn't the fact that the shipments dropped below 1936, the shipments of October, November and December,—

A. Yes.

Q. —doesn't that indicate that the orders of June and July had already dropped below 1936 orders?

MR. KATZ:

That is correct.

BY THE COURT:

Q. Isn't that what—

A. June and July orders—well, of course, June and July, that is when I—it was impossible for me to take business.

Q. Oh, I understand, but we are only talking about what that chart shows.

A. Oh, I see.

Q. Doesn't that indicate to you—

A. It shows here there was a drop in shipments, yes, sir.

Q. Doesn't it also follow from that chart there was a drop in orders in June and July,—

A. Not necessarily.

Q. —because these shipments were on June and July orders?

A. Not necessarily.

Q. I thought you just said the ordinary course of business was that the orders delivered in October, November and December—.

MR. HIRSCH:

Your Honor, that is the way he does business. He doesn't say that is the way everybody does business. I would like you to ask him.

MR. KATZ:

Certainly, ask him.

BY THE COURT:

Q. You explain that.

A. The difference is, we take our business for the period, the spring period, which carries us all the way to June 30th.

Q. Yes.

A. We take that business in along November and December,—

Q. Yes.

A. —see? And then we take our fall business in June and July, which carries us all the way into December 31st.

Q. All right, now, that I understand.

A. Yes.

Q. Don't other people do the same thing?

A. I don't know—no, some of them do "spot" business.

Q. Well, don't most manufacturers do the same as you do?

A. I wouldn't say that.

Q. Wouldn't say that?

A. No.

BY MR. KATZ:

Q. Mr. Meyer, is it not a fact that the union agreement with the association expires on September 1st of each and every year prior to this contract, or expired on September 1st of each and every year—

A. Well,—

Q. —prior to the current agreement?

A. —under this contract, under this here period that you are speaking about,—

Q. Yes.

A. —is the contract which I had made with the —where Mr. McGrady and the union, which wasn't the regular contract of the association,—

Q. You know—

A. —but to be able to get the—

Q. Excuse me,—

A. —the arbitration machinery, I was advised that it would be advisable for me to join the association.

BY THE COURT:

Q. Now, listen,—

MR. KATZ:

That is not the question.

BY THE COURT:

Q. —that is not it. Now, let me ask you this question. Take that chart.

A. Well, that chart—

Q. Just wait a minute. Let me put this question. Give him the chart.

Now, suppose you had never been in contact with statistics, or the National Association, or anything else, but you had been a hosiery manufacturer, and hadn't read the papers, or anything, you know your business and all that, and I gave you that chart, and suppose I said to you, "Now, Mr. Meyer, does that indicate or doesn't it that there was a drop in orders in June and July?" What would you have said?

A. According to this chart, yes, sir.

Q. Yes, that is what I thought.

A. Yes, sir, because it shows a very definite—

Q. It shows a drop in shipments in December and November, and wouldn't that indicate a drop in orders in June and July?

A. Well,—

Q. I mean, assuming you didn't know anything about other peoples' business?

A. That is right.

THE COURT:

All right. Now, that is where we are at.

BY MR. KATZ:

Q. Now, I show you another document.

MR. KATZ:

Will you mark this for identification?

(Chart on page 18 of brief on behalf of the Full-Fashioned Hosiery Manufacturers of America Inc., in a proceeding before a Wage Rate Tribunal in the matter of Full-Fashioned Hosiery Manufacturers of America, Inc., and American Federation of Full-Fashioned Hosiery Workers, was marked Exhibit D-10.)

THE COURT:

Do you want to show that to the jury?

MR. KATZ:

Yes, sir, I should like to mark it for identification, first.

(Exhibit D-10 for identification was shown to the jury.)

THE COURT:

You see, members of the jury, that does not indicate—don't get the wrong idea about that—that that is the absolute amount of orders. That indicates the difference between '37 and '36, and where it is high the line means that '37 was running ahead of '36, and where it gets right on that cross line it means '37 was exactly the same. When it gets below it means the '37 business for that period was below the '36 business.

MR. HIRSCH:

Of course, Your Honor precluded my examination of Mr. Constantine on that point, and I suppose you are now going to permit me to bring him into the picture.

THE COURT:

Well, now, wait until it comes up.

MR. HIRSCH:

I mean, on the statistical end of this entire thing.

THE COURT:

Well, I know, but I can't rule on matters that are not before me.

MR. HIRSCH:

All right.

THE COURT:

That is for you to say when it comes up. This is quite a different proposition. This is cross examination.

MR. KATZ:

That is right.

MR. HIRSCH:

All right, I have no objection to that; I mean, from the standpoint of proving all these figures.

BY MR. KATZ:

Q. What is this paper?

(Special News Letter of the National Association of Hosiery Manufacturers for December 29, 1937, entitled "Exit 1937" was shown to the witness.)

A. This is a Special News Letter furnished by the National Association of Hosiery Manufacturers.

BY MR. KATZ:

Q. And this—

A. It says "Exit 1937".

Q. Yes, and this Special News Letter is sent out by the National Association at various times in addition to their monthly bulletin, is that correct?

A. No—monthly bulletin?

Q. Don't they have a monthly bulletin at the same time?

A. I wouldn't call it a monthly bulletin. I think it is statistical reports that come out.

Q. All right, statistical reports. They are highly reliable, aren't they?

MR. HIRSCH:

May I see that, please?

A. Yes.

BY MR. KATZ:

Q. We all agree they are reliable?

A. Yes, sir, everybody uses those figures.

Q. Everybody uses them?

MR. HIRSCH:

Well, I will object to this bulletin unless it is shown that it is limited to the full fashioned hosiery industry, since the association is composed of both full fashioned and seamless.

THE COURT:

It is not offered in evidence.

MR. KATZ:

It is not offered in evidence.

THE COURT:

It is simply offered for cross examination. The witness looks at it, knows what it is, and says it is highly reliable. It has not been offered in evidence yet.

MR. KATZ:

No.

THE COURT:

I don't know what question is going to be based on it. He can show him anything he wants. He can show him a full fashioned stocking and base a question on it if he wants to.

BY MR. KATZ:

Q. Now, this Special News Letter is captioned "Exit 1937"; isn't it?

A. Yes.

Q. And there is certain printed matter therein referring to business during 1937, isn't there?

A. I think so. I haven't read it yet.

Q. Have you ever read this bulletin?

A. Oh, yes, I look at it right along, whenever I get the opportunity.

Q. I ask you—

A. Sometimes I miss a few of them.

Q. I ask you to read the third paragraph.

A. The third?

Q. Yes, not out loud; read it to yourself.

A. Oh, I see.

THE COURT:

You can read it yourself.

(The witness examined the document.)

BY MR. KATZ:

Q. All right, you have read it?

A. Yes.

Q. Now, I ask you whether it is not a fact that business during the latter half of the year 1937 in full fashioned women's hosiery did not decrease amongst the manufacturers who were members of the Full Fashioned Hosiery Manufacturers of America.

A. Oh, that I couldn't answer.

Q. You couldn't answer that?

A. I don't know. I don't know what their business was.

Q. You were present at the wage tribunal hearings, weren't you?

A. Yes—well, individually, I don't know what—

Q. Didn't you speak to me personally and say to me that unless you received a wage reduction which would give you at least fifty cents per dozen that you couldn't get orders.

MR. HIRSCH:

Wait a minute, this was in February, 1938?

BY MR. KATZ:

Q. Did you say that to me in February, 1938?

MR. HIRSCH:

All right, that—

A. Yes, I said that, and the reason I said that to you was because of the change in brackets of prices, where the branded lines had to come down to seventy-nine cents to meet a new—a new bracket which had—the merchandise started to slip in on the last part of the year, to go into that bracket, and we were very much concerned, because on the wages and the basis on which we were operating, we couldn't meet that bracket.

BY MR. KATZ:

Q. Didn't you say in response to Mr. Hirsch's question that the wage increase that you granted in July of 1937 did not affect your condition because it was taken up by the increase—by the decreased cost in silk?

MR. HIRSCH:

In 1937.

A. That is correct, in my selling prices.

BY MR. KATZ:

Q. That is right?

A. In my selling prices.

Q. That is right, and aren't you in direct competition with other manufacturers?

A. Yes. This condition which you speak about occurred on the end of the year.

Q. The chart doesn't say that, does it?

A. Not that chart.

Q. No.

A. But we have—

THE COURT:

He is speaking of a price condition, now.

MR. KATZ:

Yes, I know.

THE WITNESS:

Because we had to put ourselves—we were selling goods, our 1937 line showed our lowest price goods we were selling, I believe that price was $5.75, and from that time on we have tried to maintain a $5.25 price to meet that six-dollar competition of the branded lines and meet the seventy-nine cent retail selling price over the counter.

BY MR. KATZ:

Q. Didn't you also have to meet the competition from the Southern manufacturers who were selling merchandise such as you manufacture?

A. They were the ones, I believe, and certain sections of Pennsylvania, were responsible for breaking up in that new bracket.

BY MR. HIRSCH:

Q. Was this in 1938?

MR. KATZ:

1937.

BY MR. HIRSCH:

Q. When in 1937?

A. This is toward the very latter part of 1937, I mean in December, I think it was.

BY MR. KATZ:

Q. Is it not a fact, Mr. Meyer,—

THE COURT:

Is the jury through with the chart?

JUROR NO. 8:

May I ask a question?

THE COURT:

Yes.

JUROR NO. 8:

This drop-off in business here, how many of the mills had sit-down strikes that would keep them from—or, had strikes that would keep them from taking orders to deliver, or would cause those shipments to come down?

THE COURT:

Can anybody answer the question?

MR. HIRSCH:

Leader answered it by saying twenty-two had sit-down strikes, and I don't know how many more there were.

JUROR NO. 8:

Wouldn't that have something to do with the shipments, if other mills had strikes, that would keep them from shipping out their goods?

THE COURT:

That is a proper question to ask.

BY MR. KATZ:

Q. Do you want to answer the question, Mr. Meyer?

A. Naturally, you couldn't ship goods with your factories closed down and damaged and everything.

Q. Were there any sit-downs—

A. And I would say it wasn't only a question here, in Philadelphia, it was also a question of elsewhere in Pennsylvania, where mills were suffering under difficulties of labor troubles.

Q. Yes.

A. One of the biggest operators we have up in the Reading district, oh, I believe delivers at least—well, I would say three times as much merchandise as I do.

Q. Yes, they do, but they didn't stop production, did they?

A. Well, I suppose they were handicapped somewhat.

Q. You know very well, Mr. Meyer, that that strike there was unsuccessful, and we didn't stop a wheel there, you know that?

A. I don't know that.

Q. You don't know Berkshire Knitting Mills business conditions during the period of the strike?

A. I don't know what they were delivering.

Q. When did the strike at Berkshire start?

A. I think in '36, already.

Q. Was that October 1st, 1936?

A. I think in 1936.

Q. Was that strike over by January 1st, 1936?

A. Not to my knowledge.

Q. 1937; not to your knowledge?

A. No, I don't—I don't know whether the strike is over or not. I understand the National Labor Board, the question is still up before them for something. I don't know,—

Q. Well, that is immaterial.

A. Well, I don't know what the fact is.

Q. But you know as a fact that there was no strike there after January 1st, 1937?

A. That I don't know.

Q. You don't? Where else were there any strikes that you know of which may have changed the picture or explained the picture of the chart in accordance with the juror's question?

A. Well, I am only trying to explain it to the best of my ability, and which you should know just as well as I do.

Q. I can't testify, Mr. Meyer.

A. Excuse me. The situation up in the Reading district, where quite a few mills were affected, and I think their situation wasn't settled until along about the end of March, or somewheres in that period, from the first of the year, on.

Q. Yes, that strike began during the second or third month of 1937, and was ended in thirty days, wasn't it?

A. It began—

Q. Very short situation, wasn't it?

A. I think it started some time right after the

first of the year, as far as I can remember, and settled about the end of March.

Q. So that feature was not effective on shipments as a result of strikes in Reading. That would be—that would have occurred prior to the drop beginning at the end of June, 1937.

A. Well, do you—do you have in mind for a moment that if you have a labor difficulty in your factory that the moment you decide the strike is off, everything runs one hundred per cent? It takes a long while to get your organization back in shape and get your production functioning, even without damage.

Q. In your case—

A. Even without damaging machinery.

Q. I am referring now to the Reading situation—

A. Anybody.

Q. —which you referred to.

A. Anybody.

Q. You know the Nolde and Horst Company very well, don't you, Mr. Meyer?

A. Yes, I do.

Q. You do business with them?

A. Yes, they—well, they buy merchandise from us.

Q. And they are a very large operator in the Reading area, aren't they?

A. One of the largest. I don't say they are the largest.

Q. One of the largest?

A. Yes.

Q. And did they stop shipments during the month of March of April or June, 1937?

A. No, I think their labor difficulties were over at that time.

Q. Certainly they were over.

A. Yes, but they hadn't been able to place business, run their factories and put their merchandise in stock—

Q. How do know that?

A. —so they could ship it during those months.

Q. How do you know that?

A. Because they told me so.

Q. Who told you that?

A. Why, they told me they weren't operating, their plant was closed. They had a sit-down strike. I mean, I can make that deduction.

Q. You make a lot of deductions.

A. Yes, sure.

Q. Did he tell you also he went into operations as soon as the contract was signed?

A. He told me, yes, he went back into operation.

Q. Certainly, and the whole Reading situation was cleaned up long before June, 1937, wasn't it?

A. I would say so, yes.

Q. Certainly.

A. In March.

Q. To your knowledge, were there any strikes in the latter part of 1937 which would affect this chart?

A. Well, now, wait a minute, I am just not versed on that whole period of 1937, but I think there was labor difficulties in the full fashioned end during that entire period of 1937.

Q. As a matter of fact, Mr. Meyer, the industry as a whole can produce more than is shipped, isn't that so?

A. I think most every industry here—

Q. I am asking you about the full fashioned hosiery.

A. Yes, I think so.

Q. What is the productive capacity of the machinery in the country, do you know that?

A. Well, approximately, yes.

Q. What is the figure?

A. Depending on what kind of merchandise is requested and wanted, if—taking production as a whole,—

Q. Yes.

A. —I presume that the potential production of the industry would be about—oh, around forty-eight million dozens of ladies full fashioned hosiery.

Q. Yes, and about how much is shipped, what percentage of that is actually—

A. Well,—

Q. —manufactured and shipped?

A. —our records show for last year—I just don't remember, I think it is forty-two million.

Q. There is a spread there for productive capacity, isn't there?

A. Yes, but don't forget that the potential production is figured on everything operating full-time.

Q. That is correct.

A. Which, of course, you have to make certain deductions, so you can't make—

Q. That is correct, so if one plant is shut down the customer can buy it elsewhere, can't he?

A. Oh, I don't think there is any shortage of merchandise.

Q. That is right.

A. I didn't see anybody going barefooted.

Q. So that regardless of whether or not there were strikes here and there, the shipments as a whole, or the orders as a whole could have been placed at some point amongst all the manufacturers in the industry?

A. Depending on what kind of merchandise they wanted.

Q. That is correct, they would give specifications?

A. Yes, but there is certain other merchandise that they couldn't get if certain manufacturers were affected.

Q. What do you mean by that?

A. Well, you take, for instance, the non-run situation. They can't get that anywhere else.

Q. About how much of the industry produces non-run, and how much non-run is sold?

A. Makes no difference; they take all that can be produced.

Q. Yes, will you give us about how much?

A. Well, I could only estimate it. I would say the production of non-run hosiery would be—monthly basis?

THE COURT:

No; annual basis.

BY MR. KATZ:

Q. Annual basis.

THE COURT:

So as to compare it with the whole forty-eight—

A. Well, I am producing on an annual basis of that class merchandise about twenty thousand dozen a month.

BY MR. KATZ:

Q. What percentage of your annual production is twenty thousand a month?

A. Well, you could take it on a monthly basis of about one hundred thousand dozen.

Q. It is twenty per cent?

A. But it is taking up all the equipment, the available equipment, in the country.

Q. That is right.

A. Of that class of merchandise.

Q. That is right. Now, Mr. Meyer, was it not a fact that your cost of production was increased during the latter part of the year 1937?

MR. HIRSCH:

Total cost?

MR. KATZ:

Total cost of production.

A. I would say it was about even.

BY MR. KATZ:

Q. About even?

A. Yes.

Q. Does it make—

A. One offset the other, as I explained to you.

Q. That is, the reduction in the cost of silk—

A. Yes.

Q. —overbalanced the increase—

A. No, just—offset it.

Q. Offset the increase in labor rates, is that correct?

A. In the prevailing rates that existed at that time.

Q. Yes. Didn't you also have another condition in your plant, namely, the shift from the single machine system—from the double machine system to the single machine system, which would have increased your cost of production per dozen?

A. No.

Q. No?

A. No, I don't think so.

Q. Does it cost—

A. I don't know the exact figure there, but I am most certain that it did not. In fact, if anything, I think it did the opposite.

Q. You mean the single machine system—

A. Yes.

Q. —is cheaper—

A. Yes.

Q. —than the double machine system?

A. Yes, because I was running a two machine job, with one knitter and two helpers.

Q. That is right.

A. And then, of course, by running a single job I eliminated one man in there.

Q. That is right, and when you went to the single machine system you gave some helpers machines?

A. Yes, part machines, and some helpers today are still running half machines.

Q. That is right.

A. And so forth.

Q. Did you get full production from such machines which were being operated by the helpers?

A. No, not right away.

Q. Not right away?

A. But gradually they developed.

Q. About how long a time did it take?

A. Well, I think Mr. Struve is in better position to answer that than I am.

Q. Would that account for the deficiency in operation which Mr. Langer referred to?

A. No, I don't think so. I think the deficiency was due to getting started, to getting our equipment going.

Q. And this had no effect on it at all?

A. I don't—well, I couldn't say that. You would have to ask Mr. Struve. He follows that.

Q. Now, when you take orders from your customers you manufacture against those orders in the greige, don't you?

A. That is correct.

Q. And then you deliver on call?

A. That is—well, with the specified delivery date on the order.

Q. Yes, and are those orders subject to cancellation?

A. No.

Q. No?

A. No, not as long as I live up to my end of the proposition.

Q. Yes.

A. I mean, we have a regular order form, which is a bona fide order.

Q. And are those orders subject to readjustment in price?

A. No.

Q. They are not?

A. No, No, the only time we get any readjustment in price was when we had these different taxes, and so forth, that came in.

Q. Yes.

A. Of when we had specified at the time we sold that if that would take place, why, we would have to revise our prices.

Q. Now, as a matter of fact, you did do business of approximately one million and a half during the last eight months of 1937, didn't you?

A. That is right.

Q. You produced and sold one million, five hundred and seventy-five thousand dozen, two hundred and fifty-two.

MR. HIRSCH:

I won't object to the question because he said "you produced and sold." We sold that much, but some of it was already produced. Well, it doesn't matter.

MR. KATZ:

Doesn't matter.

A. Yes.

MR. HIRSCH:

We had some orders on hand, as the testimony indicated, on May 6th which were canceled, some which were not, and they went into the final figure.

BY MR. KATZ:

Q. And then you did manufacture against orders which you had on hand or took,—

A. That is right.

Q. —and the sales amounted to $1,575,252.16?

A. That is right.

Q. That is correct. How does that compare with the last six months of 1936?

A. May I look at the record? I mean, if you want me to answer it.

Q. Don't you know?

A. Not offhand.

MR. HIRSCH:

If Your Honor please,—

BY MR. KATZ:

Q. I was assuming you were the expert—

A. I can tell you, though,—

MR. HIRSCH:

If Your Honor please, this period is from May 6th.

MR. KATZ:

I will withdraw the question. Withdraw the question.

MR. HIRSCH:

I would like you to compare it, but compare it for the period of May 6th, until December 31st, and then ask him how it compares.

BY MR. KATZ:

Q. You did manufacture during the last eight months of 1937 275,791 dozen pairs of stockings, didn't you?

MR. HIRSCH:

That is objected to. That was the amount that was shipped, sold and shipped.

THE WITNESS:
That is right, that was shipped

MR. HIRSCH:
That was shipped.

THE COURT:
How much?

MR. KATZ:
275,—

THE WITNESS:
Whatever that figure is.

MR. KATZ:
—791. That was shipped.

THE COURT:
How much, please?

MR. KATZ:
275,791 dozen pairs shipped—

THE WITNESS:
That is right.

MR. KATZ:
—in the latter part of the year.

THE WITNESS:
That is right.

THE COURT:
In the last eight months?

MR. HIRSCH:
Yes, in the whole period.

THE WITNESS: In the whole period.

BY THE COURT:

Q. From May 6th to the end of the year?

A. Yes, sir.

BY MR. KATZ:

Q. When you entered into the agreement with the union on July 29th, 1937, did you go about getting business at that time?

A. July? I was trying to get business during the entire period. During that entire period I kept contact with my people as much as I could, customers.

Q. You did attempt to get business during June and July, 1937?

A. What is this? No, I told them of my predicament, so as to ask them to try to save some of that business—

Q. I didn't ask that, Mr. Meyer. Did you or did you not attempt to get business during the months of June and July, 1937?

A. No, I couldn't get no business during June and July.

Q. Did you start looking for business after July 29th, 1937?

A. Yes.

Q. You did?

A. Yes, sure.

BY MR. HIRSCH:

Q. How soon afterward?

A. Oh, I—we started right in there in August, from August, on, we tried to get business to keep on going, to fill out the period.

BY MR. KATZ:

Q. That is correct. Now, it doesn't necessarily follow—I beg your pardon, I withdraw that. So

MICRO CARD 22
TRADE MARK ®
39
1534
MATTHEW BENDER & COMPANY
MB
1539
microcard

you tried to get business starting with August, 1937?

A. Yes, as soon as we had the agreement signed.

Q. As soon as you had the agreement, you went out to get business?

A. That is right.

MR. KATZ:

That is all.

Redirect Examination

MR. HIRSCH:

Just permit me to look at this for a second, indulge me, sir.

BY MR. HIRSCH:

Q. This brief that was filed was a brief requesting a reduction in the rates during the year 1938, wasn't it?

A. Yes, sir.

Q. It had nothing to do with 1937 in so far as rates were concerned?

A. No, nothing.

Q. And I want to ask you the direct question—

BY THE COURT:

Q. Let me ask one general question, Mr. Meyer. I don't question the—wasn't that brief intended to convince the tribunal that business was getting worse during the latter part of 1937?

A. During the later months of 1937, that is right.

Q. It was filed for that purpose?

A. Due to the fact—due to the fact that this new price bracket element had crept into the—.

Q. Yes, but that chart has nothing to do with prices at all. Wasn't that chart put there to convince the tribunal that had to pass on this that business wasn't as good as it had been? Wasn't that the purpose of that thing?

A. Yes, I would say so.

Q. Surely, it was.

BY MR. HIRSCH:

Q. Now, Mr. Meyer, assuming that you had been able to take your orders in June and July for shipment during the last half of the year of 1937, would the fact that there was any recession in business generally in the hosiery industry during the later months of 1937 in any way have affected your orders taken in June and July of 1937?

A. They would not. It would not.

Q. Those orders would have been filed at the prices for which they had been taken?

A. Were taken at, absolutely.

THE COURT:

Now, let me ask Mr. Meyer a question or two, also.

BY THE COURT:

Q. Now, you have a second season—we will say that the selling peak—that a selling peak comes in June and July, that is right?

A. Yes.

Q. That I understand.

A. Yes.

Q. Now, there is a second season somewhere, and a second selling peak during the year?

A. The November-December period, and that is when we got the reaction that we were in trouble.

Q. November and December?

A. November and December is when we go out to get our spring business.

BY MR. HIRSCH:

Q. Spring of the following year?

A. Spring of the following year, and that is when we realized that this new price bracket had crept in and we couldn't meet that proposition and we must have reductions to be able to meet that seventy-nine-cent price bracket.

BY THE COURT:

Q. That is normally your second selling peak?

A. That would take us all the way up to June of the following year.

Q. That you call November and December?

A. November and December we book business.

Q. All right.

A. Of course, it is possible to take some up to the middle of January, yet.

Q. That may be called a second selling peak?

A. That is right.

Q. Now, during those two months of November and December there was nothing about the condition of your plant that prevented you trying to get all the business you possibly could, was there?

A. That is right.

Q. During that period—

A. That is right, yes, sir.

Q. —you were in position—

A. To take the business.

Q. —to take every order that was given?

A. Yes, sir.

BY MR. HIRSCH:

Q. But would those orders which you took in November and December have been for shipment in November and December?

THE COURT:

Oh, I understand that.

A. Only the following year.

THE COURT:

I understand that.

BY MR. HIRSCH:

Q. So that would in no way have affected your business for 1937 either one way or the other?

A. That is right.

Q. In other words, if business had been good in November and December it would not have helped 1937 shipments, and if it was bad it would not affect it?

A. No.

THE COURT:

Oh, we understand that, surely.

Recross Examination

BY MR. KATZ:

Q. Just one question: but this chart does show that for the members of the association during the months of June and July they could not get the business that they got for the preceding six months?

A. What was that?

MR. KATZ:
Read the question.

THE COURT:
He answered that already?

MR. KATZ:
He answered?

THE WITNESS:
Yes, I said during that period we couldn't get the business for the preceding six months.

THE COURT:
Yes, he answered that. The chart shows that, whatever the cause was.

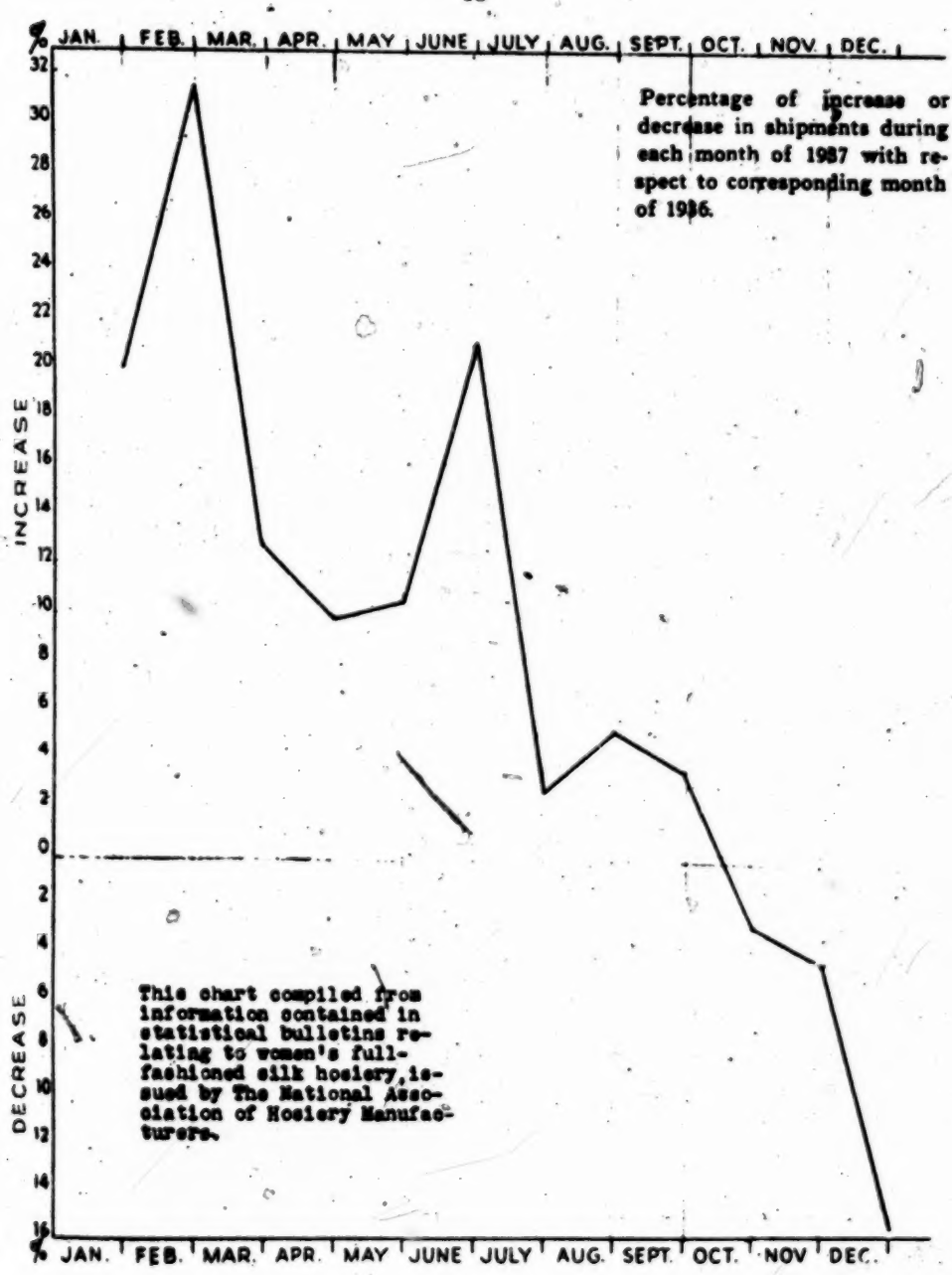
MR. KATZ:
Will you permit this chart to go in?

THE COURT:
It has been shown to the jury already.

MR. HIRSCH:
Yes, I have no objection to it.

(A copy of the chart, Exhibit D-10, follows);

18


JAN. FEB. MAR. APR. MAY JUNE JULY AUG. SEPT. OCT. NOV. DEC.
INCREASE
DECREASE
32 30 28 26 24 22 20 18 16 14 12 10 8 6 4 2 0 2 4 6 8 10 12 14 16
Percentage of increase or decrease in shipments during each month of 1937 with respect to corresponding month of 1936.
This chart compiled from information contained in statistical bulletins relating to women's full-fashioned silk hosiery, issued by The National Association of Hosiery Manufacturers.

MR. HIRSCH:

Now, if Your Honor please, Mr. Constantine was here yesterday, and he has to return to Washington, where he is appearing before the Government Wage and Hour tribunal on behalf of the industry. He came up here at my request and must now take the 3:14 train.

THE COURT:

He can't make it, but I will hear him if you want to.

MR. HIRSCH:

His testimony is most important on the general condition of the industry.

THE COURT:

Go ahead, call him.

MR. HIRSCH:

He can't stay—

MR. CONSTANTINE:

I have got to catch that train. I have to be in conference at six o'clock tonight. I am willing to take the midnight train and come back here the first thing in the morning.

MR. HIRSCH:

He has been here two days.

MR. CONSTANTINE:

I have no conflicting engagements tomorrow. I am compelled to take the 3:14 train. I may barely make it if I hurry.

THE COURT:

You come back and we will try and see what we can do.

MR. CONSTANTINE:

Thank you. I am trying to be in both places at the same time.

THE COURT:

I don't know how it will work out. All I can say is that you better come back if Mr. Hirsch wants you here.

MR. HIRSCH:

Yes.

THE COURT:

I can't guarantee we will re-open the case if it is closed. You better take a chance on it. If you miss the 3:14 you might come back this afternoon.

MR. HIRSCH:

Could I just offer in evidence through Mr. Constantine—

THE COURT:

Oh, we will assume he will testify as to what that is.

MR. HIRSCH:

To this chart, and here is the chart covering the previous year.

THE COURT:

You can probably get a long way without him, as a matter of fact. If those charts are admissible I don't see any reason why he should go on the stand to identify them.

MR. KATZ:

I would only object that they are inadmissible and have no relevancy to the question.

THE COURT:

There is no question of their authenticity.

MR. KATZ:

Unquestionably. They don't help the situation.

MR. HIRSCH:

All right, let's raise the issue as if he were on the stand. I have here, if Your Honor please, a chart prepared by the statistical department of the National Association of Hosiery Manufacturers, showing shipments of women's full-fashioned hosiery for the years 1934 to 1938, inclusive,—

THE COURT:

Let me see it.

MR. HIRSCH:

—by months, and in view of the cross-examination of Mr. Meyer I now submit, sir, that this chart is most relevant.

THE COURT:

Yes, I should think it is.

(Discussion at side bar.)

MR. HIRSCH:

Can I offer this at this time, or otherwise I will have to—

THE COURT:

Well, we may have to call him back, I don't know.

MR. HIRSCH:

Well, I offer it. If Mr. Katz objects I will

call him back. I offer in evidence at this time a statistical report of shipments of women's full-fashioned hosiery for the years 1934 to 1938, inclusive, which represents the total figures on the women's full-fashioned hosiery industry in the United States.

THE COURT:

Now, let me ask you on that report, are you going to argue from that report that business in the last eight months of 1937 was better than it was in the first four months?

MR. HIRSCH:

I am going to argue—

THE COURT:

Will you please answer my question?

MR. HIRSCH:

Yes, but I am going to say—

THE COURT:

All right, that is directly contrary to what Mr. Meyers said, isn't it?

MR. HIRSCH:

Now,—

THE COURT:

Mr. Meyers said the chart was gotten up to convince the tribunal that business was falling off during that period.

MR. HIRSCH:

But, Judge, you are asking about the total. I am going to argue that the total of the last six months was larger than the total of the first six months of 1937, which it was.

THE COURT:

This association didn't cook up a fake chart.

MR. HIRSCH:

No, if you take the total for December, you will find the total for December was less than the previous year, but we are dealing in totals of six months periods. In other words, in 1937 the total was less than 1936 for December—

THE COURT:

Well, I don't understand it, frankly.

MR. KATZ:

May I show you something else?

MR. HIRSCH:

Your Honor, it is very easily understood. If you take the figures you will see that the totals for each of the months of 1937, for the last six months of 1937, were higher than the corresponding six months of 1936 with the exception of November and December, when Mr. Meyer said there was a falling off. I only want—

THE COURT:

Well, then, the chart is wrong?

MR. HIRSCH:

No, it isn't, because the chart shows that it wasn't until November that it fell off.

THE COURT:

Oh, that is quite right.

MR. HIRSCH:

That it fell below the 1936 figures. The chart is actually right, and this is right.

MR. KATZ:

And they take the orders in June and July.

MR. HIRSCH:

But my purpose is that Mr. Constantine, who directed the preparation, would give a complete explanation of the thing, and in his absence I would like to offer this chart and argue from it.

MR. KATZ:

All right, will you let me offer a paragraph from the Special News Letter, "Exit 1937," Mr. Constantine's words, too, that one that is marked off (indicating)?

MR. HIRSCH:

No, not in the absence of knowing whether he prepared that, absolutely not.

MR. KATZ:

This is the special bulletin of the National Association of Hosiery Manufacturers, identified by Mr. Meyer. You don't agree to that?

MR. HIRSCH:

No. I don't deny that—you said Mr. Constantine's words. I don't know whether they were or were not.

MR. KATZ:

The words of the National Association of Hosiery Manufacturers in that paragraph to their members relating to the business—

MR. HIRSCH:

No, I think Mr. Constantine will have to be here, then.

MR. KATZ:
All right.

THE COURT:
You understand, I haven't excused Mr. Constantine, he just said he had to go, and that is all there is to it.

MR. HIRSCH:
Well, Judge, I had no alternative.

THE COURT:
Well, I know you hadn't.

MR. HIRSCH:
I couldn't keep him here.

THE COURT:
But don't get the idea that I agreed to sit tomorrow just to hear Mr. Constantine, if you are through with the testimony. Keep that clear in your mind. I don't want to mislead you.

MR. HIRSCH:
Well, I offer in evidence this chart.

MR. KATZ:
I object to it.

THE COURT:
Well, I will have to sustain the objection at the present time.

MR. HIRSCH:
This is a chart of the statistical department of the National Association of Hosiery Manufacturers.

THE COURT:

It appears to me that it is just about the same thing as the graph.

MR. HIRSCH:

Correct, only that this shows it in dozens, and I think it will be much easier to understand.

THE COURT:

I don't see that it makes much difference, but go ahead.

MR. HIRSCH:

I mean, I don't see any legal objection, practical legal objection, to it. The only technical objection can be that Mr. Constantine isn't here.

THE COURT:

Well, the only objection is that we are not quite sure what it represents, that is, we know who compiled it, and that Mr. Katz isn't objecting to, and we know under what authority it was issued, but we don't know what sources those statistics were drawn from.

MR. HIRSCH:

Well, I will tell you that the statistics are prepared from the Department of Commerce reports, which coincide with them within several dozen.

THE COURT:

Does that mean all the manufacturers in the country?

Mr. KATZ:

Yes.

THE COURT:

Or the North or the South?

MR. HIRSCH:

All the manufacturers in the country.

MR. KATZ:

Everybody.

THE COURT:

If that is all agreed, and it is agreed that it is authentic, I see no objection to it in the matter of relevancy. It is just as relevant as the graph was, and it shows the same thing, in fact.

MR. HIRSCH:

Yes.

MR. KATZ:

In the absence of Mr. Constantine, if he were on the stand I would want him to read this paragraph, just to show under his authority; now, I am willing to permit the chart to go in if Mr. Hirsch will admit also this Special News Letter, which bears on the same question.

MR. HIRSCH:

It doesn't bear on this ground.

MR. KATZ:

It does.

MR. HIRSCH:

I haven't read that. I don't see where it does.

MR. KATZ:

It divides the year up into two parts, the first six months and the last six months, and explains what happened in the last six months. Why won't you let that in?

MR. HIRSCH:

Mr. Meyer has told you what happened.

THE COURT:

I don't think Mr. Hirsch's agreement is necessary. Mr. Meyer has identified that and said it is highly—what did he say, highly—

MR. KATZ:

Reliable.

THE COURT:

—authentic, or reliable.

MR. HIRSCH:

If he wants to offer it on that basis I have no objection to it. He wants to offer it as Mr. Constantine's words.

THE COURT:

I don't care what—it will be received if Mr. Katz offers it in evidence.

MR. HIRSCH:

I have no objection to it, then.

THE COURT:

Yes.

MR. KATZ:

All right, then. I so offer paragraph 3 of a Special News Letter of the National Association of Hosiery Manufacturers, dated December 29, 1937, entitled "Exit 1937" and ask leave to read it to the jury at this time.

MR. HIRSCH:

Are you offering the whole—

MR. KATZ:

No, I just offered paragraph 3, and I will read it to the jury.

THE COURT:

Now, we have got everything in.

MR. HIRSCH:

This is being offered?

THE COURT:

Yes, that is being received.

MR. HIRSCH:

Plaintiff's Exhibit what?

(Statement entitled "Shipments of Women's Full-Fashioned Hosiery 1934-1938 inclusive" prepared by Statistical Department, National Association of Hosiery Manufacturers, Inc., was marked Exhibit P-28. A copy thereof follows:

Exhibit P-28

"SHIPMENTS OF
WOMEN'S FULL-FASHIONED HOSIERY
1934 - 1938 inclusive

Prepared By:

Statistical Department
National Association of Hosiery Manufacturers, Inc.

Year	January	February	March	April	May	June	July	August	September	October	November	December	Yearly Total
1934	$1,922,662	$2,384,804	**$3,014,302**	**$2,617,593**	**$2,697,765**	$2,322,190	$1,546,533	**$2,478,448**	**$2,681,151**	**$3,316,979**	**$3,292,352**	**$3,050,755**	$31,325,534
1935	2,408,846	2,547,668	**3,065,054**	**2,924,956**	**2,716,163**	2,311,214	1,948,231	**3,068,453**	**3,275,696**	**4,131,290**	**3,159,368**	**2,692,120**	34,269,061
1936	2,114,923	2,434,615	**3,370,506**	**3,065,759**	**2,729,091**	2,574,324	2,530,045	**3,098,521**	**3,785,897**	**3,961,022**	**4,026,411**	**3,709,669**	37,400,782
1937	2,525,811	**3,205,827**	**3,803,000**	**3,366,113**	3,020,953	3,118,593	2,660,047	**3,262,941**	**3,918,881**	**3,855,831**	**3,847,479**	**3,143,018**	39,678,494
1938	2,231,765	3,267,722	**4,088,887**	**3,568,033**	**3,286,578**	3,128,361	2,358,673	**3,756,098**	**4,016,028**	**4,060,923**	**4,496,081**	**3,735,012**	41,944,161

NOTE: The eight high-shipment months of each year are given in bold type")

MR. KATZ:

"At the end of the first six months of the current year our shipments were 16% ahead of the corresponding months of 1936. In several of the succeeding months shipments this year were below shipments for the same months a year ago. This was due in part to the general recession in business, and in part, doubtless, to over-buying of hosiery during the first half of the year which had to be offset by lower buying in the remaining months of the year. It continues to remain true that no man can eat his pie and still have it. It also remains true that during the last several months, as shipments reduced, most of us have forgotten the good condition which existed during the first half of the year."

MR. HIRSCH:

And I accept that statement that during the last several months the shipments reduced. I think that is Mr. Meyer's testimony, during the last several months of the year.

MR. KATZ:

Now, it stands for what I read it, why do you have to tell me—

THE COURT:

There is no use of arguing it, Mr. Hirsch.

MR. HIRSCH:

All right.

THE COURT:

You can argue to the jury when you go to the jury.

MR. HIRSCH:

All right.

(Excerpt from the December 29, 1937, issue of the Special News Letter of the National Association of Hosiery Manufacturers was marked Exhibit D-11. A copy thereof follows:

Exhibit D-11

"At the end of the first six months of the current year our shipments were 16% ahead of the corresponding months of 1936. In several of the succeeding months shipments this year were below shipments for the same months a year ago. This was due in part to the general recession in business, and in part, doubtless, to over-buying of hosiery during the first half of the year which had to be offset by lower buying in the remaining months of the year. It continues to remain true that no man can eat his pie and still have it. It also remains true that during the last several months, as shipments reduced, most of us have forgotten the good condition which existed during the first half of the year.")

THE COURT:

I wonder if Mr. Struve might be able to give me some information?

MR. HIRSCH:

Yes, I was just looking at my notes to call him on that "normal." Didn't you want to hear him on that?

THE COURT:

Yes, that is what I wanted to ask him.

MR. HIRSCH:

Mr. Struve, will you take the stand?

F. ELWOOD STRUVE, recalled.

Redirect Examination

BY THE COURT:

Q. Mr. Struve, did you assist Mr. Langer in getting up his audit and in preparing his testimony for this case?

MR. HIRSCH:

On that one point—

BY THE COURT:

Q. Well, did he get any information from you? Well, let me put it this way,—

A. Well,—

Q. Let me call your attention to this. Can you help with this? Mr. Langer testified that—

THE COURT:

Well, during what period was that deficiency, during the last eight months—

MR. HIRSCH:

August 19th until—

THE COURT:

Yes, August 19th up to October 29th, I have it here, seventy-one days.

THE WITNESS:

That is right.

THE COURT:

Let me start over again.

BY THE COURT:

Q. From August 19th, when you started operations, to October 29th, when you had made all your major repairs and were practically in full operation, or practically full ability to operate, seventy-one days, there was a deficiency in your equipment, I believe, or your productive capacity of 21.88 per cent. Now, I asked Mr. Langer what that was 21.88 per cent of, and he wasn't able to tell me, and perhaps you can tell me. What is the figure that you start with there to get the deficiency? Is that full-time production of every—

A. That is—

Q. —machine, or is it normal production based on experience during some period, or what is it? What is that?

A. That is normal production.

Q. Well,—

A. Which we—we usually figure that at about eighty-five or ninety per cent.

Q. Of full capacity?

A. Of full capacity.

THE COURT:

Well, now, that is what I wanted to know.

BY THE COURT:

Q. In other words, it was twenty-one per cent of about eighty per cent, eighty to eighty-five per cent?

A. That is right.

THE COURT:

Yes, all right. That tells me what I want to know.

MR. HIRSCH:

That is all, Mr. Struve.

THE COURT:

Wait just one minute.

MR. HIRSCH:

I beg your pardon.

BY THE COURT:

Q. That is just an arbitrary figure that you take as normal production?

A. Well, that, we estimate—

Q. Based on experience?

A. Based on experience.

Q. It is an estimate?

A. Yes, I generally estimate that production for Mr. Meyer.

Q. All right. Now, was the rate at which you repaired these machines, beginning August 19th and going on up to October 29th—did the repair and installation of the finished machines proceed at a fairly regular rate?

A. Oh, yes.

Q. So that it wasn't all done at once, it was done regularly, progressively, is that right?

A. Well, yes, we—

Q. Yes.

A. We had quite an ambition to get the place going.

THE COURT:

All right. Well, I guess that is all.

MR. HIRSCH:

I have a question to ask.

BY MR. HIRSCH:

Q. Mr. Struve, Mr. Langer testified that this was computed on the basis of the machines which were damaged and those which were actually able to run. What is the effect, for example, of a footer being out of commission by reason of damage in so far as it relates to other machinery? Will you explain what would happen if a footer is out of commission?

A. Well, if a footing machine is out of commission that places an additional three machines out of condition, with that footer.

Q. What kind of machines?

A. Legging machines.

Q. Will you explain why?

THE COURT:

Oh, well, we will accept his statement for that. Of course, that is pretty obvious.

Let me ask one more question. Now, I am going back and asking this question to the element of physical damage, and I don't want —I don't want to open the subject up again for cross-examination, and it may be that—it may be that it has already been testified to.

BY THE COURT:

Q. The damage to these machines that you sent to Reading, was that all damage of a character which could have been done in a very short time, or did it take time to damage those machines that way? I think we had some testimony on that. In

other words, take your average damaged machine, pick out a representative damaged machine, how long would it take to put it in that condition, a man with a bar or monkey wrench?

A. I believe those machines could be damaged within a couple of minutes.

THE COURT:

That is all I wanted to know. All right, gentlemen.

MR. HIRSCH:

Pardon me, one other question, while you are on that.

BY MR. HIRSCH:

Q. How many parts are there in a machine?

A. Well, I believe there is over a hundred thousand parts.

THE COURT:

Yes, we had that.

MR. HIRSCH:

Did we? I didn't remember.

THE COURT:

Yes.

MR. HIRSCH:

Mr. Langer, just one question. Will you take the stand?

JOSEPH C. LANGER, recalled.

Redirect Examination (Continued)

BY MR. HIRSCH:

Q. Mr. Langer, you were questioned this morning regarding profit you computed the company to have made during the period of January 1st to May 6th, 1937 from its hosiery operations alone. In computing that profit did you deduct from the gross profit anything for depreciation of plant and equipment?

A. Yes, sir.

Q. And was the rate of reduction for plant and equipment which you applied for the period January 1st to May 6th the same rate of reduction, same percentages, and so forth, which you applied in computing the overhead expenses which the company had to necessarily incur while if was shut down?

A. I did.

MR. HIRSCH:

That is all. Mr. Steeple.

MILTON S. STEEPLE, recalled.

Redirect Examination

BY MR. HIRSCH:

Q. Did you—I don't know whether you did or not—compile figures relating to the 10,699 dozen—

A. Yes.

Q. —of seasonable goods which you had on hand, some of which you said you subsequently sold and some of which you still have on hand?

A. I have that.

Q. Will you tell us, first, how many dozen—where are those figures?

A. They are on top there (indicating).

THE COURT:

You also might bring those figures if you got them up for me, the ones I asked.

THE WITNESS:

I am preparing them.

THE COURT:

Oh, you are still preparing those. All right.

BY MR. HIRSCH:

Q. Tell us, first, how many dozen out of this ten thousand, odd, total were sold, and the loss which you sustained in the market price as being the difference between that for which they were sold on May 6th and that which you actually received later.

A. It was a total of 2351 dozen.

Q. What had those sold for?

A. Various prices.

Q. What was the average?

A. Well, the average will bear to the amount—why, I can give it to you, $5.25, $6.00, $6.25, $7.50, $7.55—

Q. Wait a minute, do you have it in dollars both ways?

A. Yes, I have the dollars.

Q. Well, then, tell us what the dollar value was.

A. I don't have the value—I have the value at which they were sold, and the difference.

BY THE COURT:

Q. All right, what was it?

A. I have the difference.

MR. KATZ:

Take it that way.

THE WITNESS:

Sold at $3,192.75. That was not the selling price. That was the difference between selling price and the price at which they were sold.

BY MR. HIRSCH:

Q. In other words, irrespective of the average price per dozen, you took the total that they were sold for originally and the total which you actually received for them later when you had to sell them out of season?

A. That is right.

Q. And the difference is $3,192.75?

A. Seventy-six cents, to be exact.

Q. Now, then, how many dozen—strike that out. And the remaining seventy-seven hundred odd dozen are still on hand?

A. That is right.

Q. Now, will you tell us what the present value of those stockings is?

A. Twenty-one—about $21,648.51.

Q. And what was the value on May 6th?

A. Well, I haven't computed it that way, I computed it, the difference in the price, the selling price, and what we—

BY THE COURT:

Q. Well, what is it?

A. —we expect to get for them.

Q. What is it?

A. Well, it varies in styles, Your Honor.

BY MR. HIRSCH:

Q. What is the total?

BY THE COURT:

Q. What is the total?

A. Well, I can't give you that in the way I have worked it up.

Q. All right.

A. I have worked it up in the difference in the selling price and the price at which we could sell those goods today.

BY MR. HIRSCH:

Q. And how much in dollars do we stand to lose?

A. $21,648.51.

Q. And in determining that figure you applied a value to the stockings still on hand?

A. That is correct.

Q. They were all seasonable stuff, I think you described them as knee-highs and "shortees"?

A. Yes.

BY THE COURT:

Q. They have been sold?

MR. HIRSCH:

They haven't been sold.

A. We had orders for them.

THE COURT:

That is what I mean.

THE WITNESS:

We received cancellations for a lot of them after the season passed.

THE COURT:

All right, cross examine.

Recross Examination

BY MR. KATZ:

Q. You mean you had orders for the whole 10,699 knee-highs?

A. They wasn't knee-high goods, there was some brown-heeled goods, some embroidery goods, and some shadow-clocks.

Q. Were they made up on specification of customers?

A. Most of them were, yes.

Q. Don't answer "most of them". Which were, and which were made up for stock.

A. None of them were made for stock, they were all made against orders.

Q. Every one of them—

A. Yes.

Q. —was against an order?

A. Yes, we had orders—

Q. I see.

A. —for them.

Q. Now, can you show me those orders?

A. There they are (indicating).

Q. You are showing me a confirmation of an order on August 8, 1938.

A. Wait a minute. Maybe we have got all of them in there.

MR. HIRSCH:

He means the orders you originally had.

THE WITNESS:

Yes. These are the orders showing the revised price which we had to sell them.

BY MR. KATZ:

Q. I asked you for the orders—

A. Yes, I know.

Q. Then we will look at those.

A. Yes.

(The witness examined the records.)

THE WITNESS:

No, I don't have the orders for the original orders. I could produce those. I brought these orders to substantiate the difference in the price.

BY MR. KATZ:

Q. Just a moment, Mr. Steeple, you made a statement that you had orders against these stockings.

A. Yes.

Q. And when I asked you for the orders you showed me orders dated August 8th, 1938?

A. That is correct, I did that, and I justified why I did it.

BY MR. HIRSCH:

Q. Now, do you have the orders which you originally received for the stockings?

A. I believe I can get all those together. Some of our records were destroyed.

Q. When?

A. On May 6th.

Q. And have you examined the records that were available?

A. I have not, I didn't compare them in this

matter. I thought this was the manner in which they should be prepared.

BY THE COURT:

Q. Well, where did you get your figure for the price?

MR. KATZ:

That is right.

BY THE COURT:

Q. You gave us the difference between the present value and—

A. That was our list price for those styles.

Q. Oh, you just took the list price?

A. Yes.

BY MR. HIRSCH:

Q. Is the list price the price at which you sell, or do you break price below list?

A. No, we sell at list.

THE COURT:

I see.

BY MR. KATZ:

Q. I want to know this. Are you estimating you had orders, or did you actually have the orders?

A. No, I am quite certain I could produce—of course, it would take a little time—I could produce orders for all the goods which we had on hand.

Q. Were those records destroyed?

A. I can't say offhand, now.

Q. You don't know whether those records exist or not?

A. I don't until I make a complete search.

Q. You had no difficulty in producing every

other record involving every other item of damage, did you?

A. I wouldn't say I did, no.

Q. You had no difficulty at all.

A. No.

Q. But on this item you brought with you orders for 1938.

A. For the reason I just expressed.

Q. Well, I don't care about the reason. That is all you brought?

A. That is right, that is right.

MR. KATZ:

If Your Honor please,—

THE WITNESS:

I did make the offer to attempt to get the orders for you.

MR. KATZ:

—I move to strike the testimony.

THE COURT:

Let it stand until tomorrow morning. He will try to get the orders to cover those. Then I will rule on them.

Now, is there anything further?

MR. HIRSCH:

That is all, and I think that, if Your Honor please, completes our case.

THE COURT:

The only two things left, now, are Mr. Steeple's orders and then that list of monthly sales that he is going to give me.

THE WITNESS:

Yes, I have already telephoned the office and we are preparing that now, Judge.

BY MR. HIRSCH:

Q. You will have that for the Judge in the morning?

A. I am quite sure I will have it first thing in the morning, if not later in the morning.

MR. KATZ:

Does the plaintiff rest?

MR. HIRSCH:

Plaintiff rests.

MR. KATZ:

So do the defendants.

THE COURT:

All right, let me confer with counsel as to what we will do. It is understood, of course, now, that both sides have rested and all testimony is in with the exception of the two matters which I have just referred to.

Let me ask the jury to wait about a half an hour and we will try to work it out so that we can let you know just when to come back. I will confer with counsel on the proceedings, and there will be a legal argument. Probably the jury won't need to be present.

MR. HIRSCH:

Mr. Steeple says if you will wait he has some cancellations here that will prove that he originally had an order. Otherwise he can't get a cancellation—

THE COURT:
That will prove—

MR. HIRSCH:
Do you have some there?

MR. STEEPLE:
Yes, I have some.

THE COURT:
All right, wait until we work it out.

Would you, Members of the Jury, recess for half an hour, and then come back here, and then I will be able to let you know just what time we are coming back, how we are going to work this out over the week end.

(Recess at 3:25 o'clock P. M.)

(Subsequently the jury was excused for the day.)

(Adjourned until Friday, March 31st, 1939, at ten o'clock A. M.)

Philadelphia, Pa., March 31, 1939

Tenth Day

Plaintiff's Evidence (Continued)

THE COURT:
Now, is there any more testimony to be offered?

MR. HIRSCH:

Yes, there is that one bit that you left open.

THE COURT:

Mr. Simons, I asked yesterday for a tabulation of orders received month by month from August 1st to December 31st, 1937, and I have it here, and if it is satisfactory it can just be put in evidence.

MR. SIMONS:

May I see it?

THE COURT:

There it is. I guess there is no doubt about it. You can just put that list in evidence.

MR. SIMONS:

They are just the orders received, they are not the merchandise shipped?

THE COURT:

No, just the orders received month by month.

MR. HIRSCH:

About the same.

MR. SIMONS:

Well, the merchandise shipped was a million and a half.

THE COURT:

It is not the merchandise shipped.

MR. SIMONS:

Yes.

THE COURT:

It is just the orders received. I wanted that. You already have testimony on the other.

MR. HIRSCH:

Yes.

THE COURT:

What I wanted was month by month.

(List of orders received August 1, to December 31, 1937 was marked Exhibit P-29. A copy thereof follows:

Exhibit P-29

"ORDERS RECEIVED AUGUST 1, to DECEMBER 31, 1937

AUGUST 1-8	70,251	DOZEN	$381,652.11
AUGUST 19-31	23,463	DOZEN	$152,991.05
SEPTEMBER	27,022	"	187,382.91
OCTOBER	19,261	"	131,279.89
NOVEMBER	45,490	"	234,842.18
DECEMBER	9,109	"	56,447.75
	124,345	"	$762,943.78")

MR. HIRSCH:

Now, we have that one other item.

THE COURT:

What is that?

MR. HIRSCH:

Mr. Steeple, on the seasonable merchandise.

THE COURT:

All right.

MR. HIRSCH:

He was to get the orders.

THE COURT:

All right.

MILTON S. STEEPLE, recalled.

Redirect Examination

BY MR. HIRSCH:

Q. Mr. Steeple, yesterday you testified on the question of seasonable goods which you had on hand on May 6th, 1937, totaling some ten thousand, nine hundred odd dozen, which as a result of your inability to get into your plant and ship the merchandise became unseasonable, so to speak, and you testified as to the loss sustained. Now, you were asked to produce the orders which you had on hand on May 6th, or evidence that you had on hand orders which would enable you to fix the price for which they could have been sold as compared to the price for which you ultimately did sell them or for which you now hold them? Have you secured that data?

A. I have it.

Q. Will you produce it to Mr. Simons? What do you have there?

A. I have the orders.

MR. HIRSCH:

Mr. Katz wants them. Do you want to sit down for a minute with Mr. Katz?

THE COURT:

All right, dont take too long.

MR. KATZ:

No, just to look at them.

THE COURT:

Just go over to counsel table and show them.

(Discussion off the record.)

MR. KATZ:

I think this witness will have to take the stand.

THE COURT:

All right.

(Discussion off the record.)

THE COURT:

Well, take the stand, please.

MR. HIRSCH:

Take the stand and tell us what you have. Now, tell us, Mr. Steeple, just what you have there and explain it for the purpose of His Honor and the members of the jury.

MR. KATZ:

Now, is he on cross examination?

MR. HIRSCH:

Well, I want to, first—now that you haven't gotten together, I want to first ask him what he has got.

THE WITNESS:

I have the orders here, first, against the stock which we had on May 6th of this summer stock, so-called summer stocks. I also have the confirmation—

BY MR. HIRSCH:

Q. Wait a minute, what do you mean by the orders? You have there the orders which you had unfilled?

A. I have the confirmations of the orders. I couldn't get all of the original orders out because

it is two years ago and I didn't have sufficient time to get them.

Q. But you have what there?

A. I have here the confirmations of the orders, and in some cases the original order.

Q. Now, what do you mean by a confirmation, something you received from the customer—

A. An order which—

Q. —or something which you sent back to the customer?

A. Something which when an order is sent in from a customer, or from our salesman, we confirm the order.

Q. Even though you may not have the order, then, you have your confirmation of its receipt?

A. That is correct.

Q. All right, what else do you have?

A. I have the orders—confirmations of the orders at the lower price at which some of these goods were sold.

Q. You are talking now about the subsequent orders which you received for these goods on which you sustained a loss?

A. That is correct.

Q. What else do you have?

A. Well, that is about all. I have a chart here showing the grouping of it.

Q. And was that a chart that you prepared from these confirmations and sales that were subsequently made?

A. That is correct.

Q. And what does that indicate?

A. In what respect?

Q. Does that indicate the prices for which you had this merchandise sold in May—

A. And the price at which we did sell a portion of it, or the price at which we figure that we can secure for the goods.

Q. Present value?

A. If we can sell them.

MR. HIRSCH:

All right, cross examine.

Recross Examination

BY MR. KATZ:

Q. Now, may I see the original orders that you had on hand on May 6th for this merchandise?

MR. HIRSCH:

You are now talking about the customers' orders, is that right, the orders we received?

MR. KATZ:

The orders he is speaking about.

MR. HIRSCH:

All right.

A. That is on style 373, which is an embroidery style. (Indicating).

BY MR. KATZ:

Q. And that covers four thousand dozen?

A. Four thousand dozen, against which there was no goods shipped at all, and there is a letter in there from the customer insisting upon cancellation of the order.

BY THE COURT:

Q. Those are still on hand?

A. Yes—not the four thousand dozen, there is only about 593 dozen of those still on hand.

Q. But the others were sold at these lower prices?

A. 563 dozen.

Q. Is that right?

A. No, we didn't manufacture all of those goods, we didn't get a chance to manufacture all of them. Of those, that particular style, there was 109 dozen sold, and 563 dozen still on hand.

BY MR. HIRSCH:

Q. And is your loss computed on the actual manufactured goods?

A. Yes.

THE COURT:

No, he has computed it on the contract price.

BY THE COURT:

Q. Haven't you?

THE WITNESS:

Yes, but only on the goods we produced, not on the four thousand dozen, there is loss in there for that.

MR. HIRSCH:

We are not making claim for that.

THE COURT:

All right.

THE WITNESS:

Only for the actual stock produced.

THE COURT:

All right.

BY MR. KATZ:

Q. Show me the next order?

BY THE COURT:

Q. How much is that?

MR. KATZ:

Four thousand dozen, Your Honor.

THE COURT:

It doesn't cover that much.

BY THE COURT:

Q. How much are you claiming?

A. We are making claim for the difference of three dollars a dozen on 109 dozen—the same on the whole total, it would be 672 dozen at three dollars a dozen.

Q. All right, all of which you did produce?

A. We did produce, but we were unable to ship.

BY MR. KATZ:

Q. All right, now, show me the next order.

A. Here is the order for style 214, which is a knee-high style.

BY THE COURT:

Q. How many of those did you produce?

A. Our stock on hand on May 6th was 3606 dozen. We sold 1073 dozen at various prices, ranging from—

Q. How many dozen did you sell, one thousand—

A. 1073 and one-half dozen, to be exact. They were sold at various prices, four and one-quarter—

Q. Well, what is the total? What was the loss on that? How did you figure it?

A. The loss on that was the difference of $759.38.

BY MR. KATZ:

Q. On how many dozen?

A. On 1073½ dozen.

Q. Now, I show you the New Mode Hosiery Company—

BY THE COURT:

Q. Seven hundred and what?

A. $759.38.

Q. All right.

BY MR. KATZ:

Q. Now, I show you the New Mode Hosiery Company order dated April 6, 1937. That is the order you are now referring to?

A. That is one of the orders.

Q. All right, now, confining your testimony to this order,—

A. Yes.

Q. —it calls for delivery April, May and June, doesn't it?

A. That is correct.

Q. How much did you deliver against that order?

A. I am unable to say what we delivered.

Q. How much remained unsold?

A. Unsold—the whole goods were sold—undelivered I can't tell you at this date, because we didn't have sufficient time to get that from last night.

Q. Are you charging us for failure to sell one thousand under this contract—

A. No.

Q. —and deliver same to the purchaser?

A. Our charge is only based on our stock, that we had, against which we had these orders. That amounts to 3291 dozen, for which we are claiming just a dollar a dozen difference, $3,291.

Q. But when you make a promise to deliver in April, May and June, you do deliver in April, May and June?

A. Not necessarily.

Q. Not necessarily?

A. No, that is a blanket order.

Q. Does that say—

A. The customer—

Q. Does that say—

A. The customer has the privilege of detailing as to color details any time during that period.

Q. Yes, and does that say delivery for April, May and June?

A. That is correct.

Q. Did you deliver in April?

A. I can't state that—

Q. All right.

A. —at this time.

Q. All right. Now, here is an order—

A. We may have delivered a portion of it and we may not. I couldn't get the information together—

Q. I am only asking you whether or not you know or don't know. Do you know?

A. I answered that.

Q. You don't know?

A. I don't know—

Q. All right.

A. —what portion, if there was any, or what portion was shipped in May.

Q. All right.

A. Or April.

Q. Now, we come to the Lisbon Hosiery Shops, Incorporated, order of March 16th, deliveries called for March, April, May and June. How much of

this five hundred dozen in the order was actually delivered?

A. Same answer.

Q. You don't know that, either?

THE COURT:

Well, you can't recover from that. It may have all been delivered, as far as he knows. There is no evidence that it wasn't all delivered.

BY MR. HIRSCH:

Q. Well, what information have you as to whether any or all of that was—

THE COURT:

He says he doesn't know.

MR. KATZ:

He doesn't know.

THE WITNESS:

I didn't have sufficient time to get that information.

MR. HIRSCH:

Of course, it is obvious it wasn't all delivered. It is for three months, April, May and June.

THE COURT:

There is no evidence it wasn't. It could have been all delivered in April. You can't claim for that.

BY MR. HIRSCH:

Q. Well, who would know whether—

MR. KATZ:

I object to this.

THE COURT:

I certainly am not going to string the case out. It could have been prepared so it could have been proved, and it isn't proved, that is all.

MR. HIRSCH:

Well, if Your Honor please, this is not a matter that you can sit down and determine with such definiteness.

THE COURT:

He says if he had time he could do it.

MR. KATZ:

Well, he had plenty of time.

THE WITNESS:

I might add, Your Honor, on all of these styles here, with the exception of two of them, are numbers that were contained in our regular line, and, naturally, we had to produce in advance of the season goods to take care of those requirements. In other words, it takes a long time to get goods through the mill. We have got to be in the position to make delivery—

BY MR. HIRSCH:

Q. Let me ask a question—

THE WITNESS:

—within a reasonable time.

BY MR. HIRSCH:

Q. Let me ask a question. What would the season be on these goods, assuming you hadn't any of them sold on May 6th, what would be the months for their delivery?

A. June, July and August.

Q. All right, and—

MR. KATZ:

Oh,—

MR. HIRSCH:

Well, now, just a minute.

MR. KATZ:

Well, it says March, too, and April.

MR. HIRSCH:

I am not talking about any order, now.

BY MR. HIRSCH:

Q. You had on hand on May 6th of seasonable variety some ten thousand odd dozen, didn't you?

A. That is correct.

Q. And ordinarily they would have been sold during the months of May and June?

MR. KATZ:

That is objected to.

A. Yes.

BY MR. HIRSCH:

Q. So in your opinion—

MR. KATZ:

Just a moment,—

THE COURT:

Oh, I can't take this.

THE WITNESS:

They would be sold—

MR. KATZ:

Just a minute, please.

MR. HIRSCH:

Don't answer the question.

THE WITNESS:

All right.

MR. HIRSCH:

Let us assume for argument's sake they didn't have an order on hand—

THE COURT:

We have got to guess they would have been ordered.

MR. HIRSCH:

But, if Your Honor please, we have stock here on hand which has to be sold during that season or you lose the benefit of the price.

THE COURT:

Suppose it couldn't be sold.

MR. HIRSCH:

There is no evidence it couldn't. The evidence is in this man's opinion it could.

THE COURT:

The evidence is in his opinion it could, but that is only a guess.

MR. HIRSCH:

If Your Honor please, when our plant is shut down against our will on May 6th, and we have at that time seasonable goods which ordinarily would have been sold in May, June and July, it is for the jury to determine as a matter of fact, from all the evidence, whether we would or would not have sold it.

THE COURT:

Suppose you had missed your styles altogether, and your designer had been crazy, and designed a lot of stuff that was totally unsalable, you couldn't—

MR. HIRSCH:

That is for the defense to bring out, if we had crazy designers.

THE WITNESS:

I think I can help on that. In this particular sytle, during the month of April, I have a transcription from our regular order records, we received on this particular style orders for 5618 dozen, in April. It shows it was a real active style.

MR. HIRSCH:

I don't think there is any guessing about it, if Your Honor please. We had orders on hand for delivery in April, May and June. We had seasonable stock which was ordinarily sold in April, May and June, and we had that stock on hand and were prevented from using it, and I think it is for the jury to decide whether or not we could have sold that at our then list price, or whether we would not have sold any of it. Now, it may have been we wouldn't have sold any of those dozens, that may be the defendants' argument. I am going to argue, if it is permitted to go to the jury—

MR. KATZ:

Well, now, please,—

MR. HIRSCH:

—that they had the right to say so,—

MR. KATZ:

—I don't think this is fair.

MR. HIRSCH:

—that is for the jury to say—

MR. KATZ:

It is prejudicial to the defendants.

THE COURT:

Why?

MR. KATZ:

Because he is arguing the very point at issue.

THE COURT:

I don't believe the jury has the slightest idea where this fits into the case, until they are told. It will appear later on. I hardly know myself.

I think it is a doubtful item, Mr. Hirsch. If you want to press it I will let it go in.

MR. KATZ:

Now, may I say something?

THE COURT:

I think it is an extremely doubtful item.

MR. HIRSCH:

I would like to leave it for the jury's consideration.

THE COURT:

Very well.

MR. KATZ:

May I say something on the point, or am I foreclosed?

THE COURT:

If it turns out to be erroneous there will have to be a new trial granted.

MR. HIRSCH:

Well, if that is your ruling I will withdraw the item.

THE COURT:

Well, my ruling is just what it is.

MR. HIRSCH:

Well, I will withdraw the item, then. The rest of the case is too important to be prejudiced by that item.

THE COURT:

I think it is a very doubtful item.

MR. HIRSCH:

I don't withdraw the whole item. There are some things that have been proved.

THE COURT:

Yes.

Redirect Examination

BY MR. HIRSCH:

Q. What other things have you support for? I am talking about actual orders; what was cancelled after May 6th.

THE COURT:

$1,016 has been proved.

BY MR. HIRSCH:

Q. Go ahead, either by orders or confirmations.

A. I have an item here of shadow-clock style, various colors of shadow-clock.

BY THE COURT:

Q. How many?

A. 2,593 dozen.

Q. Had that been—had all that been ordered?

A. I have confirmations here extending all the way up to September of 1937.

BY MR. HIRSCH:

Q. Was any of it delivered?

A. That I have to answer the same way.

Q. When does delivery begin?

A. Begins in early March.

BY MR. KATZ:

Q. March?

THE COURT:

You see, he can't tell.

MR. HIRSCH:

All right, that is in the same class.

MR. KATZ:

All right, pass that and come to your next one.

MR. HIRSCH:

Let me approach it in a different way.

MR. KATZ:

Well, now, he is under cross examination.

MR. HIRSCH:

All right, go ahead.

MR. KATZ:

Let's handle the case and we will get through with it quicker.

THE WITNESS:

This is style 313. There are other styles on there, but the only one in question is style 313.

Recross Examination

BY MR. KATZ:

Q. Style 313?

A. That is a brown heel style.

BY THE COURT:

Q. All right, now, is that the same category as the others? Do you know whether it has been delivered or not?

A. I can't say what portion.

THE COURT:

What is the use of talking about those things? I can't tell whether they have been delivered or not.

BY MR. HIRSCH:

Q. How many dozen stockings have you on hand out of the original ten thousand? Let's approach it in a different way.

A. I would say around eight to nine thousand dozen.

Q. And what was the—

MR. KATZ:

Just a moment,—

BY MR. HIRSCH:

Q. —market value of those stockings—

MR. KATZ:

—I object to this. I object to this. They are trying to get it again, both ways.

MR. HIRSCH:

No, this would be different.

MR. KATZ:

Well, now, may I finish my point?

MR. HIRSCH:

Go ahead, finish.

MR. KATZ:

This claim was allowed to remain open on the ground that there was a proof of an actual order which was cancelled. Now it turns out there is no such evidence and he wants to get it in now —

MR. HIRSCH:

I object to that statement.

MR. KATZ:

—in an entirely—

MR. HIRSCH:

There is evidence of orders. They are deliverable over April, May, June and July.

MR. KATZ:

They may have been delivered.

MR. HIRSCH:

Don't say we don't have orders. We have orders.

MR. KATZ:

We haven't seen them.

THE COURT:

Well, now, gentlemen, I think you ought to be able to arrive at some figure here that is a proper allowance. There is probably some figure that is proper.

MR. KATZ:

I think so.

THE COURT:

If you can't do it—

Redirect Examination.

BY MR. HIRSCH:

Q. Do you have any orders there for delivery after May 6th?

THE COURT:

You can spend time on this item if you want to.

MR. KATZ:

No, I don't want to.

A. Yes, lot of orders after—

BY MR. HIRSCH:

Q. Do you have any orders there for only after May 6th?

MR. KATZ:

How much do you think you have?

MR. HIRSCH:

I don't know.

MR. KATZ:

I can't allow you to prove twenty-four thousand this way.

(Discussion off the record.)

MR. LEVIN:

Can't we do it later?

MR. KATZ:

No, not later. Everything has been done later.

THE COURT:

Oh, no, there is no reason why this shouldn't have been all in shape to produce.

BY MR. HIRSCH:

Q. Do you understand my question, orders the deliveries on which begin in May and not before?

A. There is an order here for fifteen hundred dozen of the shadow-clock during—delivery July to September.

Q. All right.

MR. KATZ:

All right.

BY MR. HIRSCH:

Q. Was that order cancelled?

A. Well, we have the goods on hand yet.

Q. All right, how many dozen?

A. This order was for fifteen hundred dozen. Our stock is approximately twenty-five hundred dozen.

Q. What was the price—just take fifteen hundred, now.

A. Yes.

Q. What was the price for which they were sold and the price for which you now value them? What is the difference in the price per dozen?

A. $2.75.

Q. That is the difference?

A. The goods were sold at $7.75 and we have put an anticipated price of five dollars on it. Whether we can get that we can't tell, we may have to sell them off four and a half, or irregulars, but they are the type of goods that only can be sold certain times of the year, and we can't even dispose of them at this time.

Q. That is a difference of $2.75 per dozen?

A. Yes. That amounts to $7,130.14.

Q. No, it doesn't; $4,125.00.

BY MR. KATZ:

Q. Is this $2.75 supposed to be market price?

MR. HIRSCH:

That is the difference between what it was sold for and the present value.

THE WITNESS:

I have the orders here.

MR. KATZ:

All right, let's close the item.

THE COURT:

How much is it?

MR. HIRSCH:

$4,125.00.

BY MR. HIRSCH:

Q. It was sold for $7.75 altogether?

A. Yes.

BY MR. SIMONS:

Q. Was it subsequently sold for five dollars?

A. No.

THE COURT:

No, it wasn't, but he says that is the highest market he can get at the present time. He is competent to say.

THE WITNESS:

I doubt whether we can get that.

THE COURT:

All right.

BY MR. HIRSCH:

Q. Give us another order the delivery of which was after May 6th.

A. I don't believe I can pick out any particular order here,—

Q. All right.

A. —the delivery is of orders beyond May 6th.

THE COURT:

Well, then, you have a total of $1,016, and $4,125, or—

MR. HIRSCH:

It is $2,116, isn't it, Judge, 672 dozen at three dollars a dozen?

THE COURT:

Yes, that is right. What is it?

MR. HIRSCH:

$2,116.00.

THE COURT:

Yes.

MR. HIRSCH:

And $4,125.00.

THE COURT:
That is right.

MR. HIRSCH:
What does that total?

MR. KATZ:
Now, Your Honor, I think that first item is subject to the same ruling, because it turns out deliveries to be made beginning March 22nd. It is in the same category.

THE COURT:
All right, now,—

MR. KATZ:
That is out.

THE COURT:
—$4,125.00.

MR. HIRSCH:
$4,125.00.

THE COURT:
All right.

MR. HIRSCH:
We will withdraw as to the rest, and end this.

THE COURT:
All right. Is that all?

MR. HIRSCH:
That is all.

MR. KATZ:
That closes the case?

MR. HIRSCH:
Yes, sir.

THE COURT:

Now, gentlemen, there are certain stipulations that will have to be placed on the record.

MR. KATZ:

Before you do that, Your Honor, may I hand up a motion in accordance with Rule 50 (b)?

THE COURT:

To do what?

MR. KATZ:

Motion for a directed verdict for the defendants.

THE COURT:

Yes. That is a motion for a directed verdict?

MR. KATZ:

Directed verdict.

THE COURT:

That motion is denied.

MR. KATZ:

Yes.

THE COURT:

I will also deny the motion to suspend the case and submit to arbitration, which was made earlier in the case.

MR. SYME:

Now, Your Honor, there was a stipulation to be entered into.

THE COURT:

All right. I think maybe you better come to side bar on these stipulations.

(The following occurred at side bar:

THE COURT:

It is stipulated between the parties—and if counsel desire they may state to the jury—that the plaintiff is not seeking a verdict against individual members of the union, and that under no circumstances will any process issue against any individual member of the union except the named defendants. That is all right?

MR. HIRSCH:

That is all right.

MR. SYME:

Yes.

THE COURT:

It is further stipulated that the provision of Rule 31 requiring the submission of points prior to the address of counsel to the jury and information by the Court of proposed action on points shall be waived, and counsel will submit points for charge after the conclusion of their addresses to the jury.)

THE COURT:

Well, there is just one more question, gentlemen, that is, about these depositions. Are you going to offer them in evidence?

MR. HIRSCH:

I have offered them in evidence.

THE COURT:

Well, Mr. Lilly thinks that there should be a stipulation as to the opening of the depositions. It is stipulated that the Court shall open the depositions designated?

MR. SYME:

Your Honor, Mr. Hirsch has offered certain depositions—

THE COURT:

That is right.

MR. SYME:

—in evidence.

MR. HIRSCH:

Yes, only the ones I named.

MR. SYME:

That has been stipulated to on the record, I am almost sure of that.

THE COURT:

Well, it is also stipulated they shall be separated from the remaining—

MR. SYME:

That is right.

THE COURT:

—depositions by the Court or the Clerk. You will have to let the Clerk know, gentlemen, you will have to let the Clerk know which ones are to be separated from the others.

MR. HIRSCH:

I have given the list, Judge, to Mr. Rodebaugh. He can give him that list.

THE COURT:

All right, gentlemen, I think we are ready.

(The following excerpts from the minutes of regular membership meetings of Branch 1 appear in Exhibit P-22:

"September 11, 1937:

Report of William Leader:

My next suggestion is to do away with the kitchen immediately. Now that all the strikes are being conducted on the outside, I do not believe it is a practical thing from a financial end to keep this kitchen going. Strikers that picket do not always eat at the same time as their fellow striker such as they do during sit-down strikes. I believe a satisfactory solution would be to estimate the cost of food alone that is given to strikers during a weeks period and add this amount to their strike benefits, thus removing unnecessary overhead."

The following excerpts from the minutes of regular meetings of the executive board of Branch 1 appear in Exhibit P-22:

"April 13, 1937:

"Moved and seconded that the President of the Branch have the power to call such strikes in open shops as he sees fit. CARRIED.

"May 4, 1937:

"Moved and seconded that President Leader be given power to call a strike in the Apex Shop whenever he sees fit. CARRIED.")

Plaintiff Rests

Defendants Rest

Evidence Closed

(Mr. Hirsch argued the plaintiff's case to the jury.)

During his address to the jury Mr. Hirsch said:

"And after that mob swept through and after Beirmeister had had his jaw broken, and it had to be wired, and he still can't eat hard food, and after Gobel, the other gentleman there (indicating), had five ribs broken, eighteen days in the Episcopal Hospital, Beirmeister, three weeks in the Episcopal Hospital, beaten down by that mob—who? Philco workers? What did they have against Beirmeister and Gobel?"

MR. SYME:

Your Honor, I object to this. I didn't want to interrupt Mr. Hirsch, but this is certainly immaterial and irrelevant—

MR. HIRSCH:

Oh,—

MR. SYME:

—to the case and prejudicial to the jury. Your Honor, I am going to ask for the withdrawal of a juror.

MR. HIRSCH:

This is evidence, sir, that is before you.

MR. SYME:

That is not the issue in the case. Mr. Hirsch knows it.

MR. HIRSCH:

It is an issue, if Your Honor please, in the case,—

MR. SYME:

It is not an issue in the case—

MR. HIRSCH:

—to show the method that was used by this defendant union—

THE COURT:

Well, the jury will understand that no element of damages is involved in the personal injury to various people on the premises at the time. That is not a matter that you will consider in fixing the damages. You will only consider it because it is evidence in the case as going to make up the general history of what occurred at that time. You won't consider it for any other purpose and you won't allow it to prejudice you or to cause you to depart from what is the real issue in the case.

With that caution I would suggest that counsel does not spend too much time on that phase. It is merely an incident of what occurred on May 6th. No one is to be held in damages for that particular item of injury. If the parties who were injured were suing here as plaintiffs it would be a different question, but they are not plaintiffs in the case. The only plaintiff here is the Apex Hosiery Company.

(Mr. Hirsch continued to argue the plaintiff's case to the jury.)

(Recess 12:35 until 2 o'clock P. M.)

After Recess

Present: Counsel as before noted.

(Mr. Hirsch continued to argue the plaintiff's case to the jury.)

(Mr. Syme argued the defendants' case to the jury.)

(Mr. Hirsch argued to the jury in rebuttal.)

THE COURT:

Well, members of the jury, I don't think that I will ask you to come back tomorrow. Over the week-end please remember what I said to you about not talking about the case, and in addition to that, don't try to make up your minds about it, and don't try to arrive at any conclusion until you have heard the charge that the Court is bound to give you under the law. Be back here at ten o'clock on Monday morning.

You can adjourn court. Now, gentlemen, have you got your points for charge?

Adjourned to Monday, April 3, 1939, at ten o'clock A. M.

Before:

HON. WILLIAM H. KIRKPATRICK, *J.*, and a Jury

Philadelphia, Pa., April 3, 1939

THE COURT:

Juror number 1, the foreman, has suffered a loss in his family and has asked to be excused. The parties have agreed that he shall be excused and that number 2 alternate shall take his place.

CHARGE OF THE COURT

KIRKPATRICK, *J.*

Members of the Jury:

It is, I am sure, needless for me to begin my charge by telling you that, in arriving at a verdict in this case, you must be guided solely by the evidence that you have heard in this case and the law as the Court will give it to you, and that you must disregard arguments addressed to you as to what may or may not be the effect of this case upon other cases or upon the cause of labor or upon the cause of employers, and that you must lay aside your individual feelings and your individual social or economic ideas and simply address yourselves to a determination of the facts in this case. If I should elaborate too much on that you could very properly answer to me that judges have been just as great offenders in that respect as anyone else; and so we will all try

to do our duty in that regard and to stick to the facts of this case and decide them solely upon the evidence as it has been presented.

You are the sole judges of the facts of the case. That is your function in the machinery of court administration. By your verdict you are to report what you think happened, as a matter of fact. I am going to review some of the facts in a very general way. Counsel have reviewed them carefully and very adequately. If I mention any particular fact or any part of the evidence in charging you, that does not mean that I do not think you should consider other things, or that I think that those things are more important than many things that I may not have an opportunity to mention. The whole evidence is before you, and you will consider everything that you have heard. Do not limit yourselves merely to such things as I may advert to in speaking to you.

This is a civil suit for damages, and the burden of proof is upon the plaintiff throughout to establish all the fact issues to your satisfaction by the weight of the evidence. There are a number of defendants here. There is a labor union, and there are four individuals who are defendants. The greater part of my charge will be devoted to the questions involving the responsibility and liability of the labor union, and then when you have determined those questions you will take up the matter of the individual defendants as I will explain to you, but if I talk about the union throughout it does not mean that the union is the only defendant, it is merely a matter of convenience so that we won't have to mention the whole list of defendants every time.

This is, as I said, a civil action for damages, and it is based upon a law passed by Congress in 1890, which is commonly known as the Sherman Anti-Trust Law. That is the only ground upon which the case properly comes into this court. The Sherman Anti-Trust Law provides that every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several States is declared to be illegal. This plaintiff in this case charges that the defendants conspired to violate the act which I have just quoted to you. The act further provides that any person who shall be injured in his business or property by reason of anything forbidden in the anti-trust laws may sue therefor, and then it goes on to say that the damages which he recovers shall be trebled; that is, multiplied by three. Now, you have nothing to do with that part of it. What you are to find is whether there was liability or responsibility on the part of these defendants, and if so, what the actual amount of damages was. Counsel has referred to the treble damage feature, but just dismiss that part of it from your minds altogether. It would not be fair, it would not be proper, for you to increase or decrease the actual damages by reason of the fact that the law has a provision in it for trebling the damages. You will find the actual amount of damages if you come to that question and if you find a verdict for the plaintiff.

It is necessary in a case under the Sherman Act to show or to prove that there was an intent, on the part of the defendants who are sued, to restrain interstate commerce. The facts involved in this case have been ruled upon by the Circuit Court of Ap-

peals in that regard, and the law as declared by the Circuit Court of Appeals requires me to say to you that if you find that the defendants did the things which they are charged with doing, then, without further proof of their intent, you may find from those facts that the defendants did intend to restrain interstate commerce.

You have as evidence of that fact the testimony to the effect that the plaintiff's business was largely an interstate business. I think the testimony was that eighty per cent of the goods that were manufactured there were shipped in interstate commerce, that there were on hand at the time of the sit-down strike some twenty-five thousand dozen of finished goods and one hundred and four thousand dozen of goods unfinished—that is, undyed, or, as they call it, in the greige—making a total of one hundred and twenty-nine thousand dozen actually manufactured of hosiery, and that there were orders on hand at that time amounting to over a million dollars—nearly a million and a half dollars—and that eighty per cent of all of that business was interstate business. That is evidence from which, under the ruling of the Circuit Court of Appeals, you may find—I am going to leave it to you to say—but you may find that there was a restraint, an intended restraint, of interstate commerce on the part of the persons, whoever they were, who caused the plant to close down and stop production.

The claim of the plaintiff in this case is based really upon two things. It is based upon a sit-down strike, and I may say that certain damages are alleged to have arisen from the mere seizure and closing down of the plaintiff's plant, and then dam-

ages are also claimed as a result of destruction, physical damage, to the plaintiff's physical property, plant, equipment and machinery. I think the logical way for you to begin to consider your verdict would be to take the sit-down strike and determine whether under the rules that I give you the union is responsible for the sit-down strike, and then we will take up the question of the physical damage to the property after that.

Of course, there is no dispute about the fact that there was a sit-down strike and that the plant of the plaintiff was occupied, without its consent, by some two hundred and fifty men, to the entire exclusion of the plaintiff (except so far as the sit-downers were willing to allow certain employees to come in,) for a period beginning on May 6th, 1937 and ending on June 23, 1937. There is no dispute about that fact. There is also no dispute that the sit-down strike, as a matter of law was not only illegal, but was criminal, under the law of Pennsylvania. The Circuit Court of Appeals so decided. I do not think any court in the country has ever, so far as I know, ruled that a sit-down strike was legal. So that those two things are established without further discussion.

Now, that brings us to the question of whether the union is responsible for or liable for the sit-down strike, and the law on that point is this. It has been clearly declared by Congress that no labor union—I am not giving the exact words—can be held liable for or responsible for an unlawful act or the unlawful acts of any of its members or officers except upon clear proof of actual participation in or actual authorization of such acts, or of ratifi-

cation of such acts after actual knowledge thereof. That is a correct statement of the law, and that is what you must have in mind when you approach this question. The mere fact that certain members of a union may perform unlawful acts for or on behalf of their union is not sufficient to impose liability upon the union. That is, you cannot say, "Some of these men were union men, and, therefore, we don't need any more evidence, we are satisfied that the union is responsible." You must find actual authorization or ratification of their acts on the part of the union after knowledge. And it is also true that, even though the union benefited by the unlawful acts of some of its members, that does not warrant the conclusion that the union either authorized or ratified the unlawful acts complained of. There must be clear proof of actual authorization or ratification.

So, let us take up the evidence very briefly and see whether the union did authorize, or rather authorize or ratify—because the evidence dovetails on those two points—and see whether there is evidence here of acual authorization or ratification after actual knowledge of the sit-down strike. Remember, I am talking about the seizure and occupation of the mill, not about the physical damage that was done to the property. That we will take up later on.

I may say that this is an issue which is disputed. The defendants' position is that there was no authorization of a sit-down strike. The defendant agrees that a strike was authorized, but the defendants' position and argument is that the sit-down strike was not intended, was not authorized, was not ratified by the union, that it occurred spontaneously, unexpectedly, and that it was the act of certain in-

dividual persons, some of whom may have been members of the union, and that, therefore, the union is not responsible for it. That is the defendants' position.

To begin with, let's see what official action by the union we have. It is proved by the minutes of the executive committee or the executive body of the union that on May 4, 1937—that is, two days before the plant was entered—it was moved and seconded that President Leader be given power to call a strike in the Apex shop whenever he sees fit. That was carried. That was the executive board of the defendant union. It is not specified in that resolution that the strike was to be a sit-down strike.

We now turn to the other evidence in the case, the background, the circumstances surrounding, to see whether it was understood and intended when that resolution was put into effect that President Leader was to be given authority to call a sit-down strike, and that a sit-down strike and not an ordinary, lawful strike, was what was really intended and what was really understood was going to be done.

The plaintiff's evidence shows, if you accept it, that during the early part of 1937 there was a general campaign by this union to obtain closed shop contracts in all the hosiery mills in Philadelphia, and that that campaign involved a large number of mills. Secondly, in the course of that campaign there were twenty, twenty-one or twenty-two sit-down strikes which actually took place, and that they all led to or were connected with the effort of the union to obtain closed shop contracts in the mills in which they took place. Now, it is not disputed that that is what happened, but it is disputed that

sit-down strikes were called, and Mr. Leader testified that the did not call sit-down strikes. The testimony on that point is this:

> "Q. And in those cases"—referring to the other twenty or twenty-one strikes in hosiery mills in Philadelphia—"the strike that took place happened to be a sit-down strike?
>
> "A. (By Mr. Leader) I would say in most cases that what is commonly classed as a sit-down strike come about. We would declare the strike, not a sit-down strike".

Nevertheless that is part of the background which you must consider.

And, thirdly, the plaintiff's evidence shows that during all this period of unionization or an effort to unionize there was a strike kitchen maintained by the union at the union expense and that, not only in the Apex case but in the case of other sit-down strikes, food was supplied from the union kitchen at union expense to the sit-down strikers. The total cost, as I have it—and remember if I misstate any facts or give you any figures that do not accord with your recollection, it is your recollection that governs, and not my statement—I may make mistakes—but as I have it, the union actually paid to maintain that strike kitchen during this entire period some twenty-three thousand dollars. And Mr. Leader testified—and I am again quoting from his testimony, because I don't want to state anything unfairly—"I knew that they supplied food to people in the—where the permission was given for it." He is referring to the other sit-down strikes. He said, also, that that entire amount did not go to sit-down

strikers, but that that food was also expended for relief of unemployed members of the union.

Fourth, the union maintained a supply of cots and blankets in its building somewhere—I don't remember just where—but they did have on hand during this period and they had on hand at the time that the Apex strike began a supply of cots and blankets which had cost them some twenty-seven hundred dollars—a large number of cots and blankets. As to that the plaintiff argues that it is all evidence that from the very beginning the union intended and anticipated that the campaign of unionization which included the Apex mill should be carried on, not through a series of ordinary, lawful strikes, but unlawful sit-down strikes. As to the cots and blankets Mr. Leader testified that they were "For someone to have something to sleep on where permission was given for the blankets or cots to be brought in." He was asked then whether there were any other mills except the Apex where the proprietor or the owner asked to have these cots and blankets brought in, and he said: "I don't know of any mill owner with the exception of the Apex who asked me to bring any cots or blankets in."

Another matter of evidence which the plaintiff points to and argues that it shows that the only intention throughout was the declaration of a sit-down strike was the minute or the excerpt from the minutes of the union of July 13th, after the strikers had left the mill. That excerpt quoted a report made by Mr. Leader—and it had to do with the strike kitchen—and in that report Mr. Leader is quoted by the union minutes as having said: "Now that

all strikes are being conducted on the outside", and then it went on to say that there was no use in maintaining the kitchen any more, indicating, as the plaintiff says, that the sole purpose of the maintenance of the kitchen was for the feeding of men who had seized mills in sit-down strikes. Mr. Leader denied that he had made that report, and you have to consider that. His position is that the minutes are in error in that respect, and it is for you to say whether you believe that he did make such a report or whether he did not. At any rate, it appears in the way I have stated it on the minutes of the meeting.

Now, all that that I have stated is what the plaintiff argues is the background and the circumstances which indicate that this resolution of May 4th was intended and directed to authorize a sit-down strike and no other kind of a strike.

In addition to that the plaintiff points to certain evidence that at the time the mob was milling about before the property Mr. Leader stood on the steps of the plant and said words to the effect, "I now declare a sit-down strike in the Apex plant." I think there were two witnesses who testified to the use of those words. Mr. Leader definitely and positively denied that he had used that expression or mentioned a sit-down strike, and you will remember what he said about what he did say, that he declared a strike and that he instructed his parties and his committee on their rights to picket, and so forth.

The plaintiff further points to evidence to the effect that Mr. Leader made a speech in the plant some short time after the mob had broken in, and that in that speech he organized and directed the

beginning of a sit-down strike by the men who afterward took part in it, and you will remember that Miss Dorwart said that he told them that they were just like soldiers in an army, and so forth. Again Mr. Leader denies that, and you will have to weigh the evidence as to whether he said that or not. It would all bear on the question.

Then there is evidence produced by the plaintiff indicating an apparent control and leadership on the part of Mr. Leader throughout the conduct of the sit-down strike, and that included one witness who testified that in Mr. Leader's presence he was introduced to someone—I have forgotten just who it was—as Mr. Leader, the man in charge of the sit-down strike, and that Mr. Leader did not object or dissent in any way from that introduction. Again, that testimony is denied by Mr. Leader, and you will have to make up your minds as to the credibility of the witnesses.

Then, finally, the plaintiff points to the fact that during the conduct of the strike, and particularly on May 6th, certain cards were presented to various persons by members of the union, and those cards contained an application for membership and this clause:

> "I pledge myself if called upon to go on a sit-down strike with other workers of the Apex Silk Hosiery Co. to bring about full recognition of our demands and the Union."

You will consider what both sides have said on the question of authorization, the evidence for and the evidence against, and you must determine whether or not in your opinion it has been clearly

proven that the union either authorized or ratified the sit-down strike as such.

With regard to the matter of ratification: you would consider the evidence on that point if you should find that there is not sufficient evidence of authorization, but it would be largely the same, in many points the same, evidence. In other words, the plaintiff argues that the payment of strike benefits to the men actually in possession of the plant, the sending of food in to them from the union strike kitchen, the payment of the benefits from the union treasury, and the sending of cots, and so forth, from the union storehouse, is all evidence of ratification of their actions by the union after knowledge of what they were doing; because it seems to me it can hardly be denied that, in view of the reports and so forth that were made, the union did not know or that the executive board of the union, or whoever was in a position to make the union responsible, did not know that the strike that was being conducted at the Apex plant was actually a sit-down strike.

Now, all that has to do with the question of the responsibility or the liability of the union for the sit-down strike. If you come to the conclusion that the union was not responsible or liable for that sit-down you would have no further to go. If, on the other hand, you come to the conclusion that the union was, within the rules that I have given you, responsible and liable, if you come to the conclusion that they did actually authorize the strike or did ratify it after actual knowledge, then you would come to the question of what damages flowed from the suspension of the plaintiff's operations or business made necessary or enforced by the seizure of

its plant. Again, I am leaving out of the question the physical damage to the plant and we are to address ourselves, now, solely to the question: What did the plaintiff lose by reason of the fact that its business was totally suspended from May 6th to June 23rd, inclusive?

The plaintiff's claim is that it is entitled to loss of profits which it would have made during that period. That, the courts have said, is a proper element of damage to consider in cases where the defendant is responsible for the total suspension and shutting down or stoppage of the plaintiff's business. And they have further said that that is not the kind of thing that can be proved—and it is not expected that it must be proved—with absolute mathematical accuracy. Of course, a jury cannot guess at a thing of that kind, but it is sufficient if there is a sound basis given the jury from which they can estimate with reasonable accuracy and approximate reasonably the amount of profits which would have been made and which were therefore lost to the plaintiff during or by reason of the shut-down.

The plaintiff gives you a basis from which you can consider that question. The basis which the plaintiff offers is the experience of the business for the five months immediately preceding, that is, from January 1st to May 6th, and the plaintiff's argument is that unless it appears that there is some definite change or something that occurred to make the period after May 6th different from the period before, then it is to be assumed, and you can properly find, that the business would have continued in the same way, and that the plaintiff would have

earned the same profits during that period that were earned the five months before.

The plaintiff has produced evidence to show that during that five months period the total net sales made by the plaintiff—and by net sales I presume is meant the sales less goods that are returned, that is, the actual sales—were two million, two hundred and forty-five thousand dollars in money, and that that represented four hundred and five thousand dozen of hosiery. When you get that down to a question of profit, the plaintiff has produced evidence to show that they made a profit per dozen of twenty-seven cents, per dollars of sales of 4.8, approximately, cents, and a profit per week of $6,111; and the plaintiff argues that you can take that figure and say that for the number of weeks which it was compelled to suspend operations it would be entitled to damages of $6,111 per week, and that it would be also entitled to damages thereafter for such loss of business as resulted from the closure of the plant during those weeks. In connection with that the plaintiff points out and argues to you that those months of June and July are a peak period, that really the plaintiff does most of its business in so far as selling goes in two periods of the year, in June and July and in November and December, and that is when it sends its salesmen out and takes the greater part of its orders, and, therefore, the plaintiff argues and suggests that a shut-down during that period, when it was impossible to take orders because of the fact that they didn't know when they were going to be able to operate again, would inflict a much greater loss of profits than merely for the five weeks during which the plant was shut down. That is a mat-

ter that you will have to take into consideration and see how far that loss extends. The plaintiff also showed that for the seven months—for the eight months; I have said five months and it is four months, isn't it? It is four months. Well, you will remember that—for the following eight months, beginning May 6th, and ending at the end of the year, the total business done by the plaintiff was a million and a half dollars in sales, and that is somewhat more than half but less than two-thirds of the business during the four months when it was allowed to operate, and that the amount of hosiery delivered, sold, during that period was two hundred and seventy-five thousand dozen, that is, in eight months, as against four hundred and five thousand dozen in four months when they were able to operate fully. The plaintiff says that that is an indication of the fact that the result of this sit-down carried over far beyond the mere period of five weeks or so when they were actually closed down. That is all for you to say, and you will have to apply your judgment to that.

The defendants, on the other hand, point out several matters which they say you must consider and which they argue indicate that this estimated profit which the plaintiff would have made is far too high. And, by the way, I may say that during the balance of the year, from May 6th to the end of the year, the plaintiff shows no profit whatever, so there is nothing to be subtracted as against whatever figure you find the plaintiff would have been expected to make. The defendants say that there are several considerations that indicate that the plaintiff's expectations are not justified by the facts, and that you

have no right to and should not find anything like the full amount of damages which the plaintiff claims for loss of profits.

In the first place, the defendants put in evidence not only the four months preceding this shut-down period, but the four years, and that shows that in 1933 the plaintiff incurred a loss of $344,000., in 1934 the plaintiff incurred a loss of $372,000., in 1935 the plaintiff incurred a loss of $149,000., and that in the whole year of 1936 there was a profit of only sixty-eight thousand dollars. Those are the figures as I have them. I hope that I haven't got them wrong. To June 30, 1936 there was a loss of one hundred and eighty-six thousand dollars. So that he says that in view of that record you have no right to presume that the business of the plaintiff would have continued during the balance of 1937 at the profit that was made during the first part of the year. Well, that is all matter for you to consider.

The plaintiff's answer to that is that they had gone through a period of depression, that the business was just getting out of it, that business was just getting good, and that there was no reason to anticipate that it would not remain good, at least for the balance of the year.

But in reply to that, again, the defendants have introduced evidence showing the condition of the business as a whole, and they argue from it that beginning some time in the fall of 1937 there was a sharp, clearly marked depression in the hosiery business, that the plaintiff could not, in view of that fact, be expected to do the same amount of business or earn the same profits as it had during

the early part of the year. In support of that, the defendants produced a brief which the plaintiff along with other manufacturers filed with a labor tribunal in an effort to get a reduction of wages. You can consider that, because that brief does indicate—or the chart filed with it does indicate—that the plaintiff was asking for a wage reduction, and basing its argument upon the fact that business was falling off rapidly during the latter part of the year.

Now, the plaintiff says that would not have affected this question, because that only had to do with orders taken in the latter part of the year, and that if it had been able to take its orders during June and July its business, whatever the rest of the industry might have felt, would have been just as good during the end period of 1937 as it was in the beginning period. That is all evidence that you must consider.

In order to find these profits you must be satisfied to what extent the business of the plaintiff during the balance of the year, or beginning with May 6th, would have held up. If you think that it would have held up as well as it did in the early part of the year, and if you think that his estimate of his business during the first part of the year was fair and accurate, then you would be entitled to give him the damages which he claims as a result of lost profits. Those several considerations have all got to be weighed carefully, and you will have to find some figure, provided you find liability for the sit-down strike.

I may say that there are two other items which

would arise, independent of the question of damage to property, which you also should give the plaintiff, or, at least, so much of them as you think he is entitled to as a result of the sit-down strike, regardless of the destruction of the property. First there is an item claimed for loss on seasonable merchandise. The plaintiff claims four thousand dollars as a result of that; that is, goods which were manufactured for that particular season and could not be sold otherwise. Also, the plaintiff claims for loss on certain elastic webbing which had to be returned, of twenty-five hundred and some dollars.

The plaintiff's claim for loss of profits amounts to ninety-one thousand dollars, in round figures, during the actual period of the shut-down, during the fifteen-week period from May 6th to August 19th, and then also an estimated loss of one hundred and sixteen thousand dollars during the balance of the year. The figures I am giving you are just his claim. They will go out with you in the form of a calculation. You are not bound by that in any way. They simply indicate what the plaintiff is here saying he is entitled to. It is for you and me to determine what he actually is entitled to and whether this is a proper claim or not.

Now we come to the question of damage arising from loss of property, and that item I am going to divide into two parts. Now, you will remember that during the sit-down strike certain knitting machinery was injured, I believe on—what was the first date?

MR. HIRSCH:
June 10th.

THE COURT:
I believe on June 10th there were, roughly, some thirty machines smashed and damaged, and then on June 22nd, the day before the sit-down strikers left the plant there were some two hundred—

MR. HIRSCH:
104.

THE COURT:
Oh, 104 more machines smashed and damaged. Now, let us take that last item first. I am leaving the damage that occurred on the 6th of May until last. Let's take the damage arising during the sit-down strike. During that period the evidence shows, if you accept it, that the mill was entirely in the control of the sit-down strikers, that the locks on the doors had been changed, that no one was allowed to come in without their permission, and no one was allowed to go out without a pass from the person who was in control of the "sit-downers," so-called, and that, generally speaking, they were in complete possession and control of the plant. The plaintiff argues from that that you may find that that damage was done by some of the sit-downers. Now, you have heard the evidence for and against that. It was suggested that the damage might have been done, at least the damage of June 10th might have been done by some of the watchmen whom the sit-downers did permit to go through. But it appears that after June 10th these watchmen were followed by members of the sit-

down strike, and that they were followed with weapons, so that they had control not only of the plant but of the movements of all of the plaintiff's employees who were permitted to come in, and there weren't very many of them. So you first have to determine whether you are satisfied that that injury was done by somebody who was a member of the sit-down strike committee, or body, or whatever you choose to call it, and then, again, you come back to this question of authorization.

Now, it is a little different proposition to say that the union authorized the damage to the machinery that took place during the sit-down strike from saying that it authorized the sit-down strike; so that, from the mere fact that you may find, if you do, that the union authorized the sit-down strike it does not necessarily follow that they authorized the damage which was done. And there the only rule I can give you is this, that when a man, or a body, or an organization, authorizes an unlawful act—and the sit-down strike was an unlawful act—it will be presumed to be responsible for and to have authorized, actually authorized, such incidents of that unlawful act as human experience would tell would naturally follow as a probable consequence in the course of the doing of that unlawful act. Now, there, you have to make another fact finding. You would have to determine whether you think—assuming that you find the union authorized the sit-down strike—that it could be and must be contemplated and understood that there was a likelihood and a probability that damage would be done to property after the seizure of the plant. That is a question that you will have to give your best

thought to. On the one hand the union counsel point out very properly that it was not part of the authorized and accepted technique of sit-down strikes to destroy property, that those men expected to work with the machines, and that their only object was to force the employer by a suspension of his business to grant their demands, and that then after that was done they were just as anxious to go ahead and do business as he was, and that it is unreasonable and out of line with the whole idea of sit-down strikes, unlawful as they were, nevertheless out of line with that idea to find that the union intended or authorized the destruction of property.

But there is something else to consider there, and that is this. First, if the union did put some two hundred and fifty young fellows in complete possession of somebody else's property—delicate machinery—could not they expect, or should not they expect, that there would be disorder, that they might not be able to be controlled, and that damage would happen? That is a question for you to answer, whether that is a probable, natural incident of that particular kind of thing. And then, when we talk about the technique of the sit-down strike, we must remember another thing. It is a consideration for you to say whether the thing that made sit-downs effective, the thing that enabled a few sit-down strikers to hold a big plant against the employer, was not the very threat that if violent measures were taken to eject them property would be destroyed. Was or was not that involved in the very idea of a sit-down strike? Not necessarily with this, now, I am talking generally about

sit-down strikes, but it is all to be taken in consideration in view of the defendants' argument that destruction of property was entirely contrary to the idea of a sit-down strike—not that they intended destruction of property, but there was a weapon which they placed in the hands of the sit-down strikers, a threat, a possibility that property would be destroyed if there was an attempt by force to eject the men who had seized the mill. Now, all that has to do with the arguments addressed to you by counsel and should be considered by you.

The fact question for you to determine is whether the union actually authorized this destruction of property by the men who did it. I do not think there is evidence to show that they ratified it if they did not authorize it. I do not think that the union was compelled or bound to dismiss from its membership all these sit-downers, unless they knew who actually had done that damage, in order to free itself of liability. But the important question is whether the authorization of the sit-down strike involved as a natural consequence, a necessary consequence, an incident, destruction of property. If it did, then the union is responsible for that item of damage, which amounts to, as the Master has found—and that is the only evidence before you, his report, and you can accept that, if you wish, in the absence of any contradiction—that amounts to $82,644.59.

Then we come to the other item of physical damage. You will remember throughout all this the burden of proof is upon the plaintiff to establish its contention by the weight of the evidence. The other item is the physical damage done to the

plant and the equipment—there was no damage to machinery at this time—on the 6th of May. There, again, you have to determine whether there was an actual authorization or ratification of that damage. It is, again, a different question from either of the two I have given you. There is not a bit of evidence in the case that any member of the union—as far as I know—committed any damage on that day. There is evidence that a large mob broke into the plant and that a great deal of damage was done; and the only question to consider there is whether Mr. Leader's declaration, if he made that declaration, of a sit-down strike, standing outside of the mill, when it is well known that a sit-down strike is conducted inside a mill, was a command or an invitation or an authorization to the mob to break in, and whether his statement was authorized by the union, because even an officer is in the same position as a member, and unless his acts, his unlawful acts, are authorized or ratified the union is not responsible for them. So that you must consider that in connection with the argument which the plaintiff makes that these other mills and this mob were let out, and this mob was really in a sense created by the union for this very purpose, at least, to have it there as a threat and a menace and to enable it to carry out its purpose. You must find actual authorization by the union. If you do so find, then you would be entitled to add to the damages the sum of $26,490.12 which took place on the 6th of May.

There is one further item of damage, and this has to do with union responsibility for the shut-down of the plant during the period from May 6th to

June 23rd, and thereafter from June 23rd to August 19th. During that last period it was shut down by reason of the destruction of the machinery. They did not start operating until the 19th, but the plaintiff was in possession of its plant on the 23rd of June. That item consists of overhead expenses, fixed charges, carrying charges, salaries, and so forth, and the plaintiff says that those expenses it had to pay anyhow, as long as it was going to stay in business it had to keep its organization together—there were certain charges that just had to be paid—and during the period that it was unable to transact any business, that was all dead loss, all that payment. There was nothing coming in, it was all going out, and there was nothing being produced and no benefit to the plaintiff by reason of these overhead expenses, these basic expenditures that were necessary in order to keep the plant going. So you can take that item of $110,967 and allow as much of it as you see fit, or you can apportion it between the period of May 6th to June 23rd if you find the union only responsible for the sit-down strike, or you can allow it for the period of May 6th to August 19th if you find the union responsible for both the sit-down strike and the damage to machinery.

Now, that covers, I think, the entire case. I am going to submit the case to you in this way, members of the jury. I am sending out a number of written questions to which you can write the answers. They follow along very closely upon what I have charged and I think they are clear enough. I do not think they need explanation. They have to do with exactly the questions I have given you, very much in the order I have given you, asking you whether the union authorized the seizure of the

plant and occupation of it, the sit-down strike, and if so, what the damage from that was; and then whether they authorized the damage to the machinery, and if so, what the damage to that was. Then on a separate sheet I have given you simply a guide for your general verdict. You do not need to write out the answers to that. You will render your verdict generally, and I have said on this separate sheet: "Is your verdict for the plaintiff or for the defendants? If your verdict is for the plaintiff, do you find a verdict against (a) The American Federation of Full Fashioned Hosiery Workers, Philadelphia Branch No. 1, Local No. 706? (b) William Leader? (c) Joseph Burge? (e) Harry Ohemig? (e) Huey Brown? Answer 'yes' or 'no' as to each." That is, you can come to that determination, and then "If your verdict is for the plaintiff what do you find to be the total amount of the plaintiff's damages?", and that should be the sum of the written figures which you will give me for damages, but you don't need to write this out, you can report this. It is simply as a guide.

I haven't said anything about the individual defendants in this case, and I do not propose to say very much. The general rules that apply to the union apply to them. It must appear that those individuals participated in some way in the illegal acts which took place, and it must appear that they are responsible for and took part in the sit-down strike, that is, not necessarily as sit-downers, but that they directed or counselled or had an active part in the sit-down strike and in the destruction of property to hold them responsible for that damage. In other words, you can answer these questions first, if you wish, and then you will find a general

verdict and come to this conclusion, "Is your verdict for the plaintiff or for the defendants?" Now, if it is for the plaintiff, you will tell me when you come into court against which defendants your verdict is. You may find against all the defendants; you may find against any of them. Then you will tell me how much your verdict is, and that would be the sum of all the damages which you find for the plaintiff.

The defendants have submitted a number of points and asked me to charge upon them. Some of them I have already covered.

The first point is denied and not read.

The second point is denied and not read.

The third point I have already charged you upon, in the very language requested.

The fourth point is denied and not read.

The fifth point is denied and not read.

The sixth point is a correct point. An officer of a labor union is not authorized merely by virtue of his office to make the Union a party to an unlawful conspiracy. That all goes to this question that I stated of actual authorization.

The seventh, eighth and ninth points I have already covered in my charge and they do not need to be answered.

The tenth point I believe I partially at least affirmed in the course of my charge, and I don't think it is necessary to answer. In other words, I charged you that failure to discharge the sit-down strikers is not in itself evidence of ratification of

their acts, but I did charge you that you might consider the support and maintenance of the sit-down strikers while in the plant as evidence of ratification.

The eleventh point is denied and not read.

The twelfth point has been covered, I think, fully in the charge and it does not need to be answered.

The thirteenth point is denied. It is correct as stated, exactly as stated; there is no evidence—it is true that it does not appear that anyone but William Leader had actual knowledge of the fact that the Apex Company had a hundred thousand dozen of hosiery finished and ready to be shipped out of the State of Pennsylvania. That is true, but you may find from the membership of the union and the fact of the familiarity of its officers with the hosiery business that the union did have knowledge of the fact that the Apex Hosiery Company was generally engaged in interstate commerce.

The fourteenth, fifteenth, sixteenth and seventeenth points are all denied and not read.

Now, gentlemen, is there anything further that either of you wish me to say to this jury which I may have omitted?

MR. HIRSCH:

Yes. Taking the last first, as to Leader's knowledge of the unfilled orders on hand and the finished merchandise on hand, the testimony given by Mr. Leader was, as I recall it, that he reported back to the executive committee of the union or to the union all of the conferences that he had.

THE COURT:

Well, that is a question of fact that you will have to determine. Actually, I don't know, I still think there is no evidence as to the exact amount, but—

MR. HIRSCH:

All right; and, secondly, I take exception to Your Honor's statement as to ratification, although you in looking over the points for charge that were handed up to you cleared up the one point so that I am not quite sure as to how you stand. In other words, after the June 10th damage, when the union continued to supply food and sustenance and strike benefits, with knowledge of the June 10th damage, I say that amounted to ratification, and likewise—

THE COURT:

I don't think so,—

MR. HIRSCH:

—the strike payments afterwards—

THE COURT:

I don't think so, and I will allow you an exception, because it was not indicated, nobody yet, as far as I know, knows exactly who did that damage. There is a fair amount of evidence that it was done by some of the sit-down strikers, but as to who did it—Oh, I don't think the union is required to dismiss the entire body of men,—

MR. HIRSCH:

Well, I will take an exception.

THE COURT:

—but the evidence of authorization is still to

be considered. It is not important whether you divide with a sharp line between the two.

MR. HIRSCH:

And I also ask that an exception be noted on the record to your affirmance of the points—

THE COURT:

Yes.

MR. HIRSCH:

—for charge—

THE COURT:

Very well.

MR. HIRSCH:

—of the defendants.

MR. KATZ:

Excuse me, what did Your Honor—

MR. HIRSCH:

And I would like a copy of those points. I haven't seen them yet.

THE COURT:

Well, I have read most of them—

MR. HIRSCH:

All right.

THE COURT:

—to the jury.

MR. KATZ:

Now, if Your Honor pleases, I ask for an exception generally to the charge,—

THE COURT:

That cannot be granted.

MR. KATZ:

—and follow it with specific exceptions.

THE COURT:

Well, all right, the specific exceptions are all right.

MR. KATZ:

First, our exception is to that portion of Your Honor's charge where you relied upon the decision of the Third Circuit Court in this case heretofore, on the ground that that decision has been obliterated by the ruling of the Supreme Court of the United States.

THE COURT:

I understand the point.

MR. KATZ:

Secondly, that even if the Third Circuit Court's decision is binding upon the Court you have withdrawn from the jury the question of intention, upon which we are entitled to a jury finding.

THE COURT:

I didn't intend to do that. I don't think the effect of my charge was that, but I allow you the exception, and we can work that out.

MR. KATZ:

I object to that portion of Your Honor's charge where you failed to charge on the meaning of restraint of interstate commerce and the requirement that there must be an undue and unreasonable restraint within the meaning of the Sherman Act, as defined by the Supreme Court's decisions heretofore.

THE COURT:

All right. I might say that you have not submitted a general point—Oh, yes, you have,—

MR. KATZ:

Yes.

THE COURT:

—the first one; well, that is all right.

MR. KATZ:

And the second point, too.

THE COURT:

It is denied, and that is all that is necessary.

MR. KATZ:

Now, I object to Your Honor's submission to the jury of the fact question as to whether or not the plaintiff in this case lost any profits, on the ground that there has been no proper basis laid by the plaintiff from which the jury could make a proper inference of loss of profits.

I object also to the rule of law laid down by which Your Honor did not state to the jury that there can be no recovery of anticipated profits unless there is a long-established business which shows that it has been a profitable business for a specific period of time in advance of the interruption.

THE COURT:

Well, that statement that Mr. Katz just made is correct, but it is for you to determine whether the basis given by the plaintiff here of four months, and as modified by the earlier four years given by the defendants, is a sufficient basis from which profits could be determined—

MR. KATZ:

May I object, Your Honor, to the explanation?

THE COURT:

—as a satisfactory basis—yes, sir.

MR. KATZ:

It is my point, sir,—

THE COURT:

All right, I will allow you an exception to that.

MR. KATZ:

Yes, sir. I object to Your Honor's failure to point out to the jury that the rate of profit would remain constant, in that you did not show to them that there was a deficiency operation of only 22.88 per cent, which of itself would show that they were not deprived of the possibility of getting business during that time, at least to that extent.

THE COURT:

Well, that is evidence in the case, as Mr. Katz has just stated, which you may consider. It is proper for you to consider that point that he has just made.

MR. KATZ:

Now, with reference to physical damage, there is one portion of Your Honor's charge which is not specific on Section 6, and that is with reference to the destruction of machinery. I object, therefore, to that portion of Your Honor's charge.

THE COURT:

Oh, it should have been. I intended it to be; that as to all that physical damage the same

rule as to authorization and ratification applies that I gave you in regard to the sit-down strike. There must be proof, clear proof.

MR. KATZ:

That is it.

THE COURT:

There must be clear proof of actual authorization or there must be clear proof of the ratification after actual knowledge. If I did not say that it was a mere oversight.

MR. KATZ:

Yes, and I object to that portion—

MR. HIRSCH:

Or participation, sir.

THE COURT:

Or participation.

MR. KATZ:

I object to that portion of Your Honor's charge where you permit the jury to indulge in a presumption of authorization,—

THE COURT:

All right.

MR. KATZ:

—because that is a denial of the clear proof doctrine.

THE COURT:

By "presumption" I mean inference, of course.

MR. KATZ:

Or inference. I object to Your Honor's fail-

ure to charge the jury with reference to the item of depreciation which is included in the one hundred and ten thousand dollars as overhead.

THE COURT:

We talked about that before. I think it is all right to submit it as it is. I will allow you that exception.

MR. KATZ:

Will Your Honor indulge me a moment—

THE COURT:

Yes.

MR. KATZ:

—while I confer with my associates?

May I assume Your Honor has allowed an exception to the disaffirmance of those points which Your Honor did not read to the jury?

THE COURT:

Yes, sir.

MR. KATZ:

That is all.

MR. HIRSCH:

May I ask one further charge,—

THE COURT:

Yes.

MR. HIRSCH:

—that in Your Honor's charge you have spoken of "authorization" and "ratification", and you have not equally stressed the word "participation" as outlined in the act, and I ask—

THE COURT:

Well, I don't believe it means very much more. You will understand that the act also uses the word "participation", but I don't believe it means very much more than either "authorization" or "ratification", when you speak of a labor union. A labor union cannot participate as such; it either authorizes or ratifies its agents or its employees or its officers to do things.

MR. HIRSCH:

I submit, sir, that when they supplied, continued to supply cots and blankets and strike benefits, that they participated in the sit-down strike.

THE COURT:

Well, it may have been authorization or it may be evidence of authorization, or it may have been ratification, and I don't know that you gain very much. I will let that stand as I have given it.

Now, members of the jury, here is the plaintiff's calculation, which, as I told you, is not evidence, and is merely indicative of what the plaintiff claims. Here are just instructions for your general verdict. You will come in and render your general verdict orally. You will say whether you find for the plaintiff or the defendants. If you find for the plaintiff, you will say against what defendants, and how much, and then in addition to that you will hand up written answers to the numbered questions. That is clear, isn't it, to everybody?

If you want copies of these questions I have them here.

MR. HIRSCH:

The exhibits will go out after the jury retires, as Mr. Rodebaugh says?

THE COURT:

That will be all right. These are my questions. You will find they follow my charge very closely.

The other alternate juror is discharged with the thanks of the Court.

(The jury retired at 11:30 o'clock A. M.)

(The defendants submitted the following motion for a directed verdict for defendants:

"MOTION FOR A DIRECTED VERDICT FOR DEFENDANTS

Under Rule 50 (b) the defendants move that the Court direct the jury to find a verdict in favor of all of the defendants on the following grounds:

A. This Court has no jurisdiction of the cause of action because there has been no violation of the provisions of the Sherman Anti-Trust Act.

B. The evidence does not establish a conspiracy with the purpose or intent, on the part of the defendants or any of them, to restrain or control the supply of women's full fashioned hosiery entering or moving in interstate commerce, or the price of it in interstate markets, or to monopolize the supply, control the price or discriminate as between would-be purchasers, or to accomplish an undue and unreasonable restraint in the article; nor can such intent be presumed from the evidence in the case. Mere reduction in the supply of an article to be shipped in interstate commerce by the illegal or tortious prevention of its manufacture or production is ordinarily an indirect and remote obstruction to that commerce.

C. That there is no clear proof that the defendants or any of them actually participated in a conspiracy to restrain interstate commerce.

D. That there is no clear proof of actual participation in, or actual authorization of the acts complained of in this cause or of ratification of such acts after actual knowledge thereof, by the defendants.

/s/ ISADORE KATZ,
/s/ M. HERBERT SYME,
/s/ BENJ. R. SIMONS,
Attorneys for Defendants."

The defendants submitted the following points for charge:

"DEFENDANTS' POINTS FOR CHARGE

The learned Trial Judge is respectfully requested to charge the jury in the above entitled case as follows:

1. Under all the evidence in the case, and the law pertaining thereto, your verdict must be in favor of all of the defendants and against the plaintiff.

2. Your verdict must be in favor of all of the defendants because the evidence does not establish a conspiracy with the purpose or intent, on the part of the defendants or any of them, to restrain or control the supply of women's full fashioned hosiery entering or moving in interstate commerce, or the price of it in interstate markets, or to monopolize the supply, control the price or discriminate as between would-be purchasers, or to accomplish an undue and unreasonable restraint in the article; nor can such intent be presumed from the evidence in the case. Mere reduction in the supply of an article to be shipped in interstate commerce by the illegal or tortious prevention of its manufacture or production is ordinarily an indirect and remote obstruction to that commerce.

3. You cannot find any one of the defend

12. Even if you find that the defendants named in this case, or some of them, intended to secure a union contract, between Union and Plaintiff, you cannot find that there was a conspiracy to restrain interstate commerce merely because their acts to secure the union contract prevented the plaintiff from manufacturing and shipping hosiery in interstate commerce.

13. Under all the evidence in this case, it does not appear that any one but William Leader had knowledge of the fact that the Apex Company had 100,000 dozens of hosiery finished and ready to be shipped outside of the State of Pennsylvania. There is no evidence that the Union knew of this fact or denied permission to Apex Company to remove such finished merchandise or intended to or in fact prevented the removal of such finished merchandise from the plant.

14. I charge you that you cannot find that there was a conspiracy to restrain interstate commerce of hosiery amongst the defendants because there is no evidence that any defendant but William Leader knew that the Apex Hosiery Company shipped merchandise outside the State of Pennsylvania.

15. The jury is instructed that there can be no ratification of acts which are in violation of the criminal statutes or of the public policy of the state or nation, and upon this principle, I instruct you that you cannot find ratification by the Union of the alleged illegal conspiracy or any unlawful acts of destruction or damage.

16. The Plaintiff in this case cannot recover for the alleged loss of anticipated profits from May 6, 1937.

17. The plaintiff cannot recover the item of depreciation of machines and buildings as an item of overhead.

Respectfully submitted,

/s/ ISADORE KATZ,
/s/ BENJ. R. SIMONS,
/s/ M. HERBERT SYME,

Attorneys for Defendants."

The following list of questions to be answered orally was submitted to the jury:

"Is your verdict for the plaintiff or for the defendants?

If your verdict is for the plaintiff, do you find a verdict against

(a) The American Federation of Full Fashioned Hosiery Workers, Philadelphia Branch No. 1, Local No. 706?

(b) William Leader?

(c) Joseph Burge?

(d) Harry Ohemig?

(e) Huey Brown?

Answer 'yes' or 'no' as to each.

If your verdict is for the plaintiff what do you find to be the total amount of the plaintiff's damages?"

ants in this case liable for damages resulting from any unlawful acts, except upon clear proof of actual participation in or actual authorization of *such acts* or of ratification of such acts after actual knowledge thereof.

4. The jury is instructed to find that there is no clear proof that the Union Defendant either actually participated in or actually authorized any destruction or damage to the plant, equipment or merchandise of the plaintiff which occurred on May 6, 1937, nor is there clear proof that the Union ratified such acts of destruction or damage after actual knowledge thereof.

5. The jury is instructed to find that there is no clear proof that the Union Defendant either actually participated in or actually authorized any destruction or damage to the plant, equipment or merchandise of the plaintiff which occurred between May 7, 1937 and June 23, 1937 inclusive, nor is there clear proof that the Union ratified such acts of destruction or damage after actual knowledge thereof.

6. An officer of a labor union is not authorized merely by virtue of his office to make the Union a party to an unlawful conspiracy.

7. The jury is instructed that even if it finds that there was a conspiracy by the defendants in this case to damage the property of the plaintiff, that still it cannot find the defendants liable for such destruction or damage unless it further finds that the plant, machines and merchandise were damaged with intent to restrain trade or interstate commerce of hosiery.

8. I hereby charge you that the mere fact that members of a union may perform unlawful acts for and on behalf of their union is not sufficient to impose liability upon the Union.

9. I hereby charge you that even though the Union benefited by the unlawful acts of some of its members, that this does not warrant the conclusion that the Union either authorized or ratified the unlawful acts complained of in this case.

10. I hereby instruct you that even though officers of the Union had knowledge of unlawful acts, but took no action, and even though the official paper of the Union carried reports of the Apex strike and activities, and even though the Union took no disciplinary action against such members who may have participated in unlawful acts, and even though the conduct of such individual members who participated in the unlawful acts benefited the Union, nevertheless, you cannot find a verdict against the Union for such unlawful acts by individual members or officers.

11. I charge you that even though you find that the Union authorized or ratified the sit-down strike at the plaintiff's plant, nevertheless you cannot impose liability upon the Union for the destruction or damage to the plant, merchandise and equipment because you cannot infer that the Union should have foreseen that such destruction and damage would be done by the persons engaged in the sit-down strike.

The following questions to be answered in writing were submitted to the jury:

"Did the Union actually authorize the seizure and occupation of the plaintiff's plant by the sit-down strikers?

2. Did the Union, after actual knowledge, ratify the seizure and occupation of the plant by the sit-down strikers?

3. If the answer to either Question 1 or Question 2, or both, is 'yes', then what amount of damage, if any, did the plaintiff suffer in loss of profits by reason of the fact that it was unable to carry on its normal business while the strikers were in possession of its plant?

4. Did the Union actually authorize the injury to knitting machinery, plant, equipment and merchandise which occurred between May 7th and June 23rd, inclusive?

5. Did the Union ratify after actual knowledge thereof the injury to knitting machinery, plant, equipment and merchandise which occurred between May 7th and June 23rd, inclusive?

6. If the answer to Question 4 or to Question 5, or to both, is 'yes', then what amount of physical damage (in dollars and cents) was done, during the period May 7th to June 23rd inclusive, to the plaintiff's knitting machinery, plant, equipment and merchandise?

7. Did the Union actually authorize the destruction of and damage to the physical prop-

erty and merchandise of the plaintiff which occurred on May 6th or any of the same?

8. Did the Union ratify after actual knowledge thereof the destruction of and damage to the physical property and merchandise of the plaintiff which occurred on May 6th, or any of the same?

9. If the answer to Question 7 or to Question 8, or to both, is 'yes', then what amount of physical damage (in dollars and cents) was done on May 6th, 1937 to the plaintiff's plant, equipment and merchandise?

10. Was the plaintiff compelled to make payments and incur expenses during the period May 6th to August 19, 1937 for all or any of the items referred to collectively during the trial as overhead expenses?

11. If the answer to the foregoing question is 'yes', then what was the total amount of damage suffered by the plaintiff by reason of such payments?

12. If the answer to Questions 4, 5, 7 and 8, or to any of them is 'yes', then what amount of damages, if any, did the plaintiff suffer in loss of profits by reason of the fact that it was unable to carry on its normal business after the strikers left the plant because of damage to its knitting machinery?

13. Did the plaintiff sustain a loss on seasonable merchandise by reason of the occupation of its plant by the sit-down strikers?

If your answer is 'yes', what was the amount of that loss?

14. Did the plaintiff sustain a loss on elastic webbing as a direct result of the occupation of its plant by the sit-down strikers?

If your answer is 'yes', what was the amount of that loss?

15. Did all or any of the individual defendants participate in, authorize or ratify the sit-down strike?

If less than all, name those who did.

16. Did all or any of the individual defendants participate in, authorize or ratify the damaging of the plaintiff's property on May 6th?

If less than all, name those who did?

17. Did all or any of the individual defendants participate in, authorize or ratify the damaging of the plaintiff's knitting machinery from May 7th to June 23rd, inclusive?

If less than all, name those who did?"

The following plaintiff's calculation of losses for which claim is made in this suit was submitted to the jury:

"PLAINTIFF'S CALCULATION OF LOSSES FOR WHICH CLAIM IS MADE IN THIS SUIT

Damage to plant, equipment and merchandise on May 6, 1937	$ 26,490.12
Damage to plant, machinery, equipment and merchandise between May 7 and June 23, 1937	82,644.59
Overhead expenses, fixed charges, carrying charges, salaries, etc. during the period May 6, 1937 to August 19, 1937	110,967.26
Loss of profits during fifteen week period, May 6, 1937 to August 19, 1937 (based on rate of profit made during period of January 1, to May 6, 1937, of $6,111.00 per week)	91,665.00
Loss of profits during nineteen week period, August 19, 1937 to December 31, 1937 (based on rate of profit made during period of January 1 to May 6, 1937, of $6,111.00 per week)	116,109.11

Loss on seasonable merchandise	4,125.00
Loss on elastic webbing	2,574.00
TOTAL	$434,574.97")

(The jury returned at 4:07 P. M. for further instructions.)

THE COURT:

Members of the jury, I have a question from you which I have submitted to counsel, requesting information as to whether or not it is necessary to answer all of the special interrogatories which I submitted in the form of questions, and my answer to it is that the Court will require you to answer all those questions. Is that clear?

(The jury retired).

(The jury returned at 5:15 P. M.)

THE CLERK:

Foreman, please rise. Members of the jury, have you agreed upon your verdict?

JUROR NO. 1:

Yes, sir.

THE CLERK:

You have answered the interrogatories?

JUROR NO. 1:

Yes.

THE CLERK:

How do you then find, for the plaintiff or for the defendants?

JUROR NO. 1:

We find for the plaintiff.

THE CLERK:

How do you assess the damages?

JUROR NO. 1:

Damages, $237,310.85.

THE CLERK:

Against which defendants?

JUROR NO. 1:

Against the American Federation of Full Fashioned Hosiery Workers, Philadelphia Branch No. 1, Local No. 706, and William Leader.

THE CLERK:

And as to the other three defendants you find for the defendants?

JUROR NO. 1:

That is right.

THE COURT:

Have you answered all the questions?

JUROR NO. 1:

Yes, sir.

THE COURT:

Now, just let me go over that.

THE CLERK:

Members of the jury, hearken unto your verdict as the Court hath recorded it. In the

matter wherein Apex Hosiery Company is plaintiff and the American Federation of Full Fashioned Hosiery Workers, Philadelphia Branch No. 1, Local No. 706 and William Leader are defendants, you find for the plaintiff and assess the damages against both defendants in the sum of $237,310.85. As to the defendants, Joseph Burge, Harry Oehmig and Huey Brown you find for the defendants.

JUROR NO. 1:

That is right.

THE CLERK:

So say you all.

THE COURT:

Now, I have the answers to the interrogatories, which I will just read for the purpose of the record.

The answer to the first question is "Yes."

The answer to the second is "Yes."

The answer to the third question is "$24,000."

The answer to the fourth question is "Yes."

The answer to the fifth question is "Yes."

The answer to the sixth question is "$82,644.59."

The answer to the seventh question is "No."

The answer to the eighth question is "No."

The answer to the ninth question is the word "None," which is the same as not answering.

To the tenth question the answer is "Yes,

with the exception of salaries from which we deducted $8000."

The answer to the eleventh question "$102,967.26."

The answer to the twelfth question is "$21,000."

The answer to the thirteenth question is "$4125."

The answer to the fourteenth question is "Yes," and the amount is given as $2574.

The answer to the fifteenth question is "Yes," and the answer to the second part of that question is "William Leader."

The answer to the sixteenth question is "No."

The answer to the seventeenth question is "Yes," to the first part, and to the second part the answer is "William Leader."

Those answers appear to the Court to be consistent with each other and with the general verdict.

MR. HIRSCH:

May I have the answer to number 11 just for my own record, Judge Kirkpatrick?

THE COURT:

Number 11?

MR. HIRSCH:

Yes.

THE COURT:

$102,967.26.

MR. HIRSCH:

And may I have the answer to—oh, that is all right. Thank you.

THE COURT:

All right. Members of the jury, you are now discharged with the thanks of the Court for having performed a difficult and an arduous duty and in an intelligent manner.

MR. HIRSCH:

May I thank the members of the jury?

MR. SIMONS:

May I extend the thanks on behalf of the defendants? I know you have had quite a task and it has been a difficult one. We appreciate your indulgence.

MR. HIRSCH:

Pardon me, Judge Kirkpatrick, before the jury is dismissed I move that the verdict of the jury be entered in triple amount in accordance with the provisions of the Sherman Act, the total amount of which will be $711,932.55.

THE COURT:

Yes, well, the Court grants the motion and makes the entry.

(The jury returned written answers to the questions as follows:

"1. Did the Union actually authorize the seizure and occupation of the plaintiff's plant by the sit-down strikers?

Yes.

2. Did the Union, after actual knowledge, ratify the seizure and occupation of the plant by the sit-down strikers?

Yes.

3. If the answer to either Question 1 or Question 2, or both, is 'yes,' then what amount of damage, if any, did the plaintiff suffer in loss of profits by reason of the fact that if was unable to carry on its normal business while the strikers were in possession of its plant?

$24,000.

4. Did the Union actually authorize the injury to knitting machinery, plant, equipment and merchandise which occurred between May 7th and June 23rd, inclusive?

Yes.

5. Did the Union ratify after actual knowledge thereof the injury to knitting machinery, plant, equipment and merchandise which occurred between May 7th and June 23rd, inclusive?

Yes.

6. If the answer to Question 4 or to Question 5, or to both, is 'yes,' then what amount of physical damage (in dollars and cents) was done, during the period May 7th to June 23rd inclusive, to the plaintiff's knitting machinery, plant, equipment and merchandise?

$82,644.39.

7. Did the Union actually authorize the destruction of and damage to the physical property and merchandise of the plaintiff which occurred on May 6th, or any of the same?

No.

8. Did the Union ratify after actual knowledge thereof the destruction of and damage to the physical property and merchandise of the plaintiff which occurred on May 6th, or any of the same?

No.

9. If the answer to Question 7 or to Question 8, or to both, is 'yes,' then what amount of physical damage (in dollars and cents) was done on May 6th, 1937 to the plaintiff's plant, equipment and merchandise?

None.

10. Was the plaintiff compelled to make payments and incur expenses during the period May 6th to August 19th, 1937 for all or any of the items referred to collectively during the trial as overhead expenses?

Yes, with the exception of salaries from which we deducted $8000.

11. If the answer to the foregoing question is 'yes,' then what was the total amount of damage suffered by the plaintiff by reason of such payments?

12. If the answer to Questions 4, 5, 7 and 8, or to any of them is 'yes,' then what amount of damages, if any, did the plaintiff suffer in loss of profits by reason of the fact that it was unable to carry on its normal business after the strikers left the plant because of damage to its knitting machinery?

$21,000.

13. Did the plaintiff sustain a loss on seasonable merchandise by reason of the occupation of its plant by the sit-down strikers?

Yes.

If the answer is 'yes,' what was the amount of that loss?

$4125.

14. Did the plaintiff sustain a loss on elastic webbing as a direct result of the occupation of its plant by the sit-down strikers?

Yes.

If your answer is 'yes,' what was the amount of that loss?

$2574.

15. Did all or any of the individual defendants participate in, authorize or ratify the sit-down strike?

Yes.

If less than all, name those who did.

Wm. Leader.

16. Did all or any of the individual defendants participate in, authorize or ratify the damaging of the plaintiff's property on May 6th?

No.

If less than all, name those who did?

17. Did all or any of the individual defendants participate in, authorize or ratify the damaging of the plaintiff's knitting machinery from May 7th to June 23rd, inclusive?

Yes.

If less than all, name those who did?

Wm. Leader.")

VERDICT

(The jury returned a verdict for the plaintiff and against the defendants American Federation of Full Fashioned Hosiery Workers, Philadelphia Branch No. 1, Local No. 706, and William Leader in the amount of $237,310.85.)

JUDGMENT

(Filed April 4th, 1939)

Before KIRKPATRICK, *J.*

AND NOW, to wit: April 4, 1939, in accordance with the verdict and the direction of the Court, Judgment is hereby entered in favor of Plaintiff, Apex Hosiery Company, and against the defendants The American Federation of Full Fashioned Hosiery Workers, Philadelphia Branch No. 1, Local No. 706, and William Leader, in the sum of Seven hundred Eleven thousand Nine hundred Thirty-two and 55/100 ($711,932.55) together with counsel fees in the sum of Twenty-five thousand ($25,000.00) Dollars, and costs to be taxed; and Judgment is hereby entered in favor of the defendants Joseph Burge, Harry Ohmeig and Huey Brown, and against the plaintiff, Apex Hosiery Company, for their costs to be taxed.

By the Court:

Attest: GILBERT W. LUDWIG,
Deputy Clerk.

MOTION TO SET ASIDE VERDICT AND JUDGMENT AGAINST WILLIAM LEADER AND AMERICAN FEDERATION OF HOSIERY WORKERS, BRANCH NO. 1, LOCAL 706

(Filed April 14, 1939)

AND NOW, to wit, this 13th day of April, 1939, the defendants, William Leader and American Federation of Hosiery Workers, Branch No. 1, Local 706, having moved for a directed verdict on behalf of all the defendants at the close of the evidence offered by the plaintiff, Apex Hosiery Company, and having assigned reasons therefor, which motion was denied; and having moved for a directed verdict for all of the defendants at the close of all the evidence, which motion was also denied; and having presented a point for binding instructions, which point was denied; come now by their Attorneys Isadore Katz, M. Herbert Syme, and Benjamin R. Simons, Esqs., and move to have the verdict and any judgment entered thereon against them set aside and to have judgment entered in accordance with their motion for a directed verdict.

M. Herbert Syme,
Isadore Katz,
Benj. R. Simons,
Attorneys for William Leader and American Federation of Hosiery Workers, Branch No. 1, Local 706.

MOTION AND REASONS FOR NEW TRIAL

(Filed April 18, 1939)

To the Honorable the Judges of Said Court:

AND NOW, to wit, this day of April 1939, come the defendants, William Leader and the American Federation of Full Fashioned Hosiery Workers, Branch No. 1, Local 706, by their attorneys, M. Herbert Syme, Benjamin R. Simons, and Isadore Katz, Esqs., and move the court for a new trial as to them and assign in support thereof the following reasons:

1. The verdict is against the law.

2. The verdict is against the evidence.

3. The verdict is against the weight of the evidence.

4. The Honorable Court erred in charging the jury as follows:

> "It is necessary in a case under the Sherman Act to show or to prove that there was an intent, on the part of the defendants who are sued, to restrain interstate commerce. The facts involved in this case have been ruled upon by the Circuit Court of Appeals in that regard, and the law as declared by the Circuit Court of Appeals requires me to say to you that if you find that the defendants did the things which they are charged with doing, then, without further proof

of their intent, you may find from those facts that the defendants did intend to restrain interstate commerce." (Page 5 of Charge) N. T. 1390

5. That the court failed to charge the jury on the meaning of the term "restraint of interstate commerce" as defined by the decisions of our Supreme Court of the United States interpreting the Sherman Act. (N. T. 1427)

6. The Honorable Court erred in failing to charge the jury that in order that there should be a restraint of interstate commerce within the meaning of the Sherman Act, it must be determined to be an undue and unreasonable restraint of the flow of that commodity in interstate commerce causing a diminution in the supply thereof or the control of the price of said product. (N. T. 1427)

7. The court has erred in failing to charge the jury that in construing the Sherman Act, the Supreme Court has consistently held to the view that as applied to labor combination in order to constitute a violation of the act, there must appear something more than the mere reduction in the supply of an article to be shipped in interstate commerce by the illegal or tortious prevention of its manufacture or production.

8. The Honorable Court erred in failing to charge the jury that there must be present the purpose or intent to restrain or control the supply entering and moving in interstate commerce or the price of it in interstate markets or to monopolize

the supply, control the price or discriminate between would-be purchasers.

9. The Honorable Court erred in withdrawing from the jury the question of the intention of the defendants to restrain interstate commerce. (N. T. 1391)

10. The Honorable Court erred in charging the jury:

> "* * * the only rule I can give you is this, that when a man, or a body, or an organization, authorizes an unlawful act—and the sit-down strike was an unlawful act—it will be presumed to be responsible for and to have authorized, actually authorized, such incidents of that unlawful act as human experience would tell would naturally follow as a probable consequence in the course of the doing of that unlawful act." (Page 29 of Charge) N. T. 1414

11. The Honorable Court erred in charging the jury that they may presume facts and inferences contrary to the requirements of Section 6 of the Norris-LaGuardia Act which states that there must be actual authorization of actual participation in, or ratification after actual knowledge thereof. (N. T. 1414 and 1415)

12. The Honorable Court erred in charging the jury:

> "It is a consideration for you to say whether the thing that made sit-downs effective, the thing that enabled a few sit-down strikers to

hold a big plant against the employer, was not the very threat that if violent measures were taken to eject them property would be destroyed. Was or was not that involved in the very idea of a sit-down strike? Not necessarily with this, now, I am talking generally about sit-down strikes, but it is all to be taken in consideration in view of the defendants' argument that destruction of property was entirely contrary to the idea of a sit-down strike—not that they intended destruction of property, but there was a weapon which they placed in the hands of the sit-down strikers, a threat, a possibility that property would be destroyed if there was an attempt by force to eject the men who had seized the mill. Now, all that has to do with the argument addressed to you by counsel and should be considered by you." (N. T. 1415 and 1416)

13. The Honorable Court erred in failing to state to the jury that there can be no recovery of anticipated profits unless there is a long established business which shows that it has been a profitable one for a specific period of time in advance of the interruption. (N. T. 1428)

14. The Honorable Court erred in failing to charge the jury with respect to the item of depreciation included in the item of damage as overhead. (N. T. 1430)

15. The Honorable Court erred in failing to affirm the first point for charge presented by the defendant and erred in denying and not reading the

said point to the jury which point reads as follows:

> "Under all the evidence in the case, and the law pertaining thereto, your verdict must be in favor of all of the defendants and against the plaintiff."

16. The Honorable Court erred in failing to affirm the second point for charge presented by the defendant and erred in denying and not reading the said point to the jury which point reads as follows:

> "Your verdict must be in favor of all of the defendants because the evidence does not establish a conspiracy with the purpose or intent, on the part of the defendants or any of them, to restrain or control the supply of women's full fashioned hosiery entering or moving in interstate commerce, or the price of it in interstate markets, or to monopolize the supply, control the price or discriminate as between would-be purchasers, or to accomplish an undue and unreasonable restraint in the article; nor can such intent be presumed from the evidence in the case. Mere reduction in the supply of an article to be shipped in interstate commerce by the illegal or tortious prevention of its manufacture or production is ordinarily an indirect and remote obstruction to that commerce."

17. The Honorable Court erred in failing to affirm the fourth point for charge presented by the defendant and erred in denying and not reading the

said point, to the jury which points reads as follows:

> "The jury is instructed to find that there is no clear proof that the Union Defendant either actually participated in or actually authorized any destruction or damage to the plant, equipment or merchandise of the plaintiff which occurred on May 6, 1937, nor is there clear proof that the Union ratified such acts of destruction or damage after actual knowledge thereof."

18. The Honorable Court erred in failing to affirm the fifth point for charge presented by the defendant and erred in denying and not reading the said point to the jury which point reads as follows:

> "The jury is instructed to find that there is no clear proof that the Union Defendant either actually participated in or actually authorized any destruction or damage to the plant, equipment or merchandise of the plaintiff which occurred between May 7, 1937, and June 23, 1937 inclusive, nor is there clear proof that the Union ratified such acts of destruction or damage after actual knowledge thereof.

19. The Honorable Court erred in failing to read the seventh point for charge presented which reads as follows:

> "The jury is instructed that even if it finds that there was a conspiracy by the defendants in this case to damage the property of the plaintiff, that still it cannot find the defendants liable for such destruction or damage unless it further finds that the plant, machines

and merchandise were damaged with intent to restrain trade or interstate commerce of hosiery."

20. The Honorable Court erred in failing to read the eighth point for charge presented which reads as follows:

"I hereby charge you that the mere fact that members of a union may perform unlawful acts for and on behalf of their union is sufficient to impose liability upon the Union."

21. The Honorable Court erred in failing to read the ninth point for charge presented which reads as follows:

"I hereby charge you that even though the Union benefited by the unlawful acts of some of its members, that this does not warrant the conclusion that the Union either authorized or ratified the unlawful acts complained of in this case."

22. The Honorable Court erred in failing to read the tenth point for charge submitted which is as follows:

"I hereby instruct you that even though officers of the Union had knowledge of unlawful acts, but took no action, and even though the official paper of the union carried reports of the Apex strike and activities, and even though the Union took no disciplinary action against such members who may have participated in unlawful acts, and even though the conduct of such individual members who participated

in the unlawful acts benefited the Union, nevertheless, you cannot find a verdict against the Union for such unlawful acts by individual members or officers."

23. The Honorable Court erred in failing to affirm the eleventh point for charge presented by the defendant and erred in denying and not reading the said point to the jury which point reads as follows:

"I charge you that even though you find that the union authorized or ratified the sit-down strike at the plaintiff's plant, nevertheless you cannot impose liability upon the Union for the destruction or damage to the plant, merchandise and equipment because you cannot infer that the Union should have foreseen that such destruction and damage would be done by the persons engaged in the sit-down strike."

24. The Honorable Court erred in failing to read the twelfth point presented which is as follows:

"Even if you find that the defendants named in this case, or some of them, intended to secure a union contract, between Union and Plaintiff, you cannot find that there was a conspiracy to restrain interstate commerce merely because their acts to secure the union contract prevents the plaintiff from manufacturing and shipping hosiery in interstate commerce."

25. The Honorable Court erred in failing to affirm the thirteenth point for charge presented by the defendant and erred in denying and not reading

the said point to the jury which point reads as follows:

> "Under all the evidence in this case, it does not appear that any one but William Leader had knowledge of the fact that the Apex Company had 100,000 dozens of hosiery finished and ready to be shipped outside of the State of Pennsylvania. There is no evidence that the Union knew of this fact or denied permission to Apex Company to remove such finished merchandise or intended to or in fact prevented the removal of such finished merchandise from the plant."

26. The Honorable Court erred in failing to affirm the fourteenth point for charge presented by the defendant and erred in denying and not reading the said point to the jury which point reads as follows:

> "I charge you that you cannot find that there was a conspiracy to restrain interstate commerce of hosiery amongst the defendants because there is no evidence that any defendant but William Leader knew that the Apex Hosiery Company shipped merchandise outside the State of Pennsylvania."

27. The Honorable Court erred in failing to affirm the fifteenth point for charge presented by the defendant and erred in denying and not reading the said point to the jury which point reads as follows:

> "The jury is instructed that there can be no ratification of acts which are in violation of the criminal statutes or of the public policy of the

state or nation, and upon this principle, I instruct you that you cannot find ratification by the Union of the alleged illegal conspiracy or any unlawful acts of destruction or damage."

28. The Honorable Court erred in failing to affirm the sixteenth point for charge presented by the defendant and erred in denying and not reading the said point to the jury which point reads as follows:

"The plaintiff in this case cannot recover for the alleged loss of anticipated profits from May 6, 1937."

29. The Honorable Court erred in failing to affirm the seventeenth point for charge presented by the defendant and erred in denying and not reading the said point to the jury which point reads as follows:

"The plaintiff cannot recover the item of depreciation of machines and buildings as an item of overhead."

30. The Honorable Court erred in admitting testimony relating to the conversation between J. L. Milestone and members of his Shop Committee. (N. T. Pages 31 and 32)

31. The Honorable Court erred in denying the motion to strike out testimony of conversations held between J. L. Milestone and his Shop Committee. (N. T. Page 40)

32. The Honorable Court erred in admitting

testimony of F. Weinhold and his Shop Committee. (N. T. Page 43)

33. The Honorable Court erred in failing to strike out the testimony of F. Weinhold and the Shop Committee. (N. T. Page 45)

34. The Honorable Court erred in admitting and failing to strike out testimony of J. Friedland and his Shop Committee. (N. T. Page 50)

35. The Honorable Court erred in admitting into evidence testimony relating to a conference held between the American Federation of Hosiery Workers and the non-union manufacturers prior to May 6, 1938. (N. T. Pages 66-68)

36. The Honorable Court erred in admitting into evidence photographs not properly proven and a proper basis laid for their introduction into evidence. (N. T. Page 86)

37. The Court erred in admitting into evidence testimony of a conference held between the plaintiffs and the union subsequent to July 29, 1937. (N. T. Pages 109 and 110).

38. The Honorable Court erred in admitting into evidence numerous copies of the Hosiery Worker, a newspaper. (N. T. Page 361)

39. The Honorable Court erred in admitting into evidence conversations had between J. A. Harper and William Etter. (N. T. Pages 418 and 419)

40. The Honorable Court erred in admitting

testimony of J. A. Harper that he heard sounds of machines being smashed. (N. T. 434 and 435)

41. The Honorable Court erred in admitting the presentation of the proof of damages by the plaintiff in total sums without demanding proof to substantiate the items thereof and imposing the burden upon the defendant to disprove the figures of the plaintiff as presented. (Steeple's testimony Pages 8, 9, 10, 11, 12, 15, 16, 18, 23, 33, 34, 36, 37, 40, 47, 49, 50, 60, 63 and 66.) (N. T. Pages 485 to 543)

42. The Honorable Court erred in failing to strike out the testimony of Mr. Steeple as not being the proper basis for the determination of damages. (N. T. Page 74)

43. The Honorable Court erred in admitting into evidence improper testimony on the matter of interstate commerce by permitting Mr. Meyers to testify generally as to his business in interstate commerce. (N. T. Page 55)

44. The Honorable Court erred in permitting Mr. Steeple to testify as to the nature of the interstate business of the said company without substantiating the percentages thereof by the actual books and records of said company. (N. T. Pages 50, 51 and 52)

45. The Honorable Court erred in failing to dismiss the plaintiff's cause of action on the ground that the court was without jurisdiction, the plaintiff having failed to prove the case under the Sherman Act; and also on the ground that the require-

ments of Section 6 of the Norris-LaGuardia Act have not been met by the plaintiff in establishing liability upon the defendants herein. (N. T. 648 and 649)

46. The Court erred in failing to sustain the objection to questions by Mr. Hirsch as to the political tie-up between William Leader, one of the defendants, and Mayor Wilson, it being improper cross-examination and there being no substantiation of any such charges made. (N. T. 715)

47. The Honorable Court erred in failing to sustain an objection to reading an excerpt from a document not in evidence. (N. T. 718)

48. The Honorable Court erred in dismissing the motion for submission of the cause to arbitration in accordance with the provisions of Section 3 of the Act of February 12, 1925, 43 Statutes 83. (N. T. Page 899)

49. The Honorable Court erred in referring the matter of physical damages to a Master. (N. T. Page 967)

50. The Honorable Court erred in permitting the plaintiff to offer in evidence and to read to the jury the report of the Master on his findings on physical damage. (N. T. Page 977)

51. The Honorable Court erred in instructing the jury as follows:

> "Under the Rules of Procedure, I instruct you that you may consider the Master's report

as evidence of the amount of damages sustained by the plaintiff in this case. All right."

(N. T. Page 982)

52. The Honorable Court erred in permitting Mr. J. C. Langer, one of the plaintiff's witnesses to testify before the jury in the matter of damages by stating total sums of money claimed by the plaintiff as damages without presenting all the details thereof. (N. T. Page 992)

53. The Honorable Court erred in permitting J. C. Langer, plaintiff's witness, to testify over objection that he was not properly qualified to present for the consideration of the jury the items of damage claimed by the plaintiff. (N. T. Pages 1001 and 1002)

54. The Honorable Court erred in permitting said J. C. Langer to testify from the statement prepared by an accountant as to profits and losses covering the period from January 1, 1937 to May 6, 1937, when the evidence indicated that an inventory was considered but no physical inventory actually taken. (N. T. Page 1004)

55. The Honorable Court erred in permitting J. C. Langer to testify to the profits of the plaintiff's business from January 1, 1937, to May 6, 1937, merely by reading same from an audit made of the books of the company without proving the details thereof or showing that it flows from damage or unlawful acts committed by any of the defendants within the meaning of the Sherman Act. (N. T. 1004 and 1005)

56. The Honorable Court erred in permitting said J. C. Langer to testify, over objection, to the total volume of sales for the period of January 1, 1937 to May 6, 1937. (N. T. Page 1006)

57. The Honorable Court erred in permitting the plaintiff to prove profits earned by merely considering the profits over a six month period and dividing it equally during that time. (N. T. Pages 1007 and 1008)

58. The Honorable Court erred in permitting J. C. Langer to testify as to the volume of business done from May 6, 1937 to December 31, 1937, for the purpose of proving possible loss of profits. (N. T. Pages 1015 and 1019)

59. The Honorable Court erred in permitting J. C. Langer to testify and to admit into evidence his statement as to the amount of fixed charges allegedly paid by the company from May 6, 1937, to August 19, 1937. (N. T. 1020, 1021 and 1926)

60. The Honorable Court erred in refusing to strike from the record all of the testimony given by Mr. Langer. (N. T. Page 1032)

61. The Honorable Court erred in permitting said J. C. Langer to testify as to carrying charges incurred by the plaintiff from August 19, 1937, to December 31, 1937, in an attempt to allocate same as between the business done and that which should have been done. (N. T. Page 1034 and 1035)

62. The Honorable Court erred in refusing to strike out the testimony as to the alleged item of

overhead during the period from August 19, 1937 to December 31, 1937, as being merely conjectural and not with sufficient certainty for consideration by the jury. (N. T. Pages 1039, 1040 and 1042)

63. The Honorable Court erred in refusing to strike from the record among the items of expense presented to the jury as overhead, the charge for superintendent's salaries. (N. T. Page 1044)

64. The Honorable Court erred in refusing to strike out from the record every item presented as overhead expense by the plaintiff and alleged to be chargeable to the defendant. (N. T. Page 1044)

65. The Honorable Court erred in refusing to strike from the record the item of factory supervision charged as overhead. (N. T. Page 1050)

66. The Honorable Court erred in refusing to strike from the record the item of depreciation on machinery charged by the plaintiff as an item of overhead expense and attributing same as an item of damage for which they sought reimbursement. (N. T. Pages 1060, 1073 and 1079)

67. The Honorable Court erred in refusing to strike from the record the item of depreciation on real estate charged by the plaintiff as an item of overhead expense and attributing same as an item of damage for which they sought reimbursement. (N. T. Page 1079)

68. The Court erred in refusing to strike from the record testimony as to insurance charges al-

leged as an item of overhead and presented as an item of damage alleged to be chargeable to the plaintiff. (N. T. Pages 1092, 1094, 1098 and 1099)

69. The Honorable Court erred in refusing to strike from the record an item of salesmen's expense for the New York office which the plaintiff presented as an item of overhead chargeable to the defendants in this case. (N. T. Pages 1125 and 1126)

70. The Honorable Court erred in refusing to strike from the record an item of office expense for the New York office which the plaintiff presented as an item of overhead chargeable to the defendants in this case. (N. T. Page 1127)

71. The Honorable Court erred in refusing to strike from the record the item representing office salaries included as overhead. (N. T. Page 1131)

72. The Honorable Court erred in refusing the defendant the right to examine the general ledger in an effort to prove the accuracy of the amounts and to test the credibility of J. C. Langer. (N. T. Pages 1143, 1144 and 1145)

73. The Honorable Court erred in refusing to strike from the record the item of dues and assessments charged as overhead and alleged to be part of the damages claimed by the plaintiff. (N. T. 1151, 1153 and 1154)

74. The Honorable Court erred in refusing to strike from the record the item of Pennsylvania Corporation Stock Tax from the overhead charges

as an item of damages claimed by the plaintiff. (N. T. Page 1160)

75. The Honorable Court erred in refusing to strike from the record the item of reserve for Federal and Pennsylvania taxes from the overhead charges as an item of damage claimed by the plaintiff. (N. T. 1167)

76. The Honorable Court erred in refusing to strike from the record the item of Social Security Taxes from the overhead charges as an item of damage claimed by the plaintiff. (N. T. Pages 1175 and 1176)

77. The Honorable Court erred in refusing to strike from the record the item of salary of superintendents, from the overhead charges as an item of damage claimed by the plaintiff. (N. T. Page 1183)

78. The Honorable Court erred in refusing to strike from the record the item of salary of factory supervision from the overhead charges as an item of damage claimed by the plaintiff. (N. T. Page 1183)

79. The Honorable Court erred in refusing to strike from the record the item of salary of Mr. Meyers, president of the plaintiff company, from the overhead charges as an item of damage claimed by the plaintiff. (N. T. Page 1183)

80. The Honorable Court erred in refusing to strike from the record the item of heat, light and

power from the overhead charges as an item of damage claimed by the plaintiff. (N. T. 1223)

81. The Honorable Court erred in failing to grant the defendant's motion for a directed verdict. (N. T. Page 1379)

M. Herbert Syme,
Isadore Katz,
Benj. R. Simons.

OPINION SUR MOTION TO SET ASIDE THE VERDICT AND JUDGMENT AND MOTION FOR A NEW TRIAL

(Filed April 24, 1939)

Before: KIRKPATRICK, *J.*

The defendants have presented a motion to set aside the verdict and judgment, and a motion for a new trial. The former raises the single question whether the evidence established a case of violation of the Sherman Anti-Trust Law.

When the sit-down strike at the Apex mill first came before this Court, upon proceedings for an injunction, I dismissed the bill, holding that, although the strike was in plain violation of the law of Pennsylvania, the case could not be brought within the scope of the Anti-Trust Law, because the only purpose on the part of the defendants proved was to force the plaintiff to accept the closed shop, and there was no evidence of any intent to restrain interstate commerce. The Circuit Court of Appeals reversed the decree and directed this Court to issue the injunction, which was done.

It will be noted that the Circuit Court of Appeals did more than merely rule that there was evidence in the case from which an intent to restrain interstate commerce could be found. If that had been the extent of the decision the case would have been returned to this Court to make a fact finding upon the point. Since it is unlikely that the Circuit Court of Appeals intended to find facts itself, its

decision can only mean that, as a matter of law, the requisite intent is conclusively presumed from the seizure of the plant by the defendants and the consequent stopping of production and shipment of goods.

If this ruling is binding upon me, it disposes not only of the motion to set aside the verdict and judgment, but also of the main reasons for the motion for a new trial; because, under it, I would have been justified in limiting the jury to the sole issue of authorization or ratification. As a matter of fact, I submitted the question of the defendants' intent as well—a course of which the plaintiff might have some reason to complain, but not the defendants.

The defendants now contend that the order which the Supreme Court of the United States made in disposing of the injunction proceedings had the effect of nullifying the decision of the Circuit Court of Appeals as a binding precedent, and that I am entirely free to decide these motions as though no such decision had ever been rendered. The order of the Supreme Court is as follows:

> "Upon consideration of the return of the petitioners to the rule to show cause, the petition for writ of certiorari is granted, the decree of the Circuit Court of Appeals reversed, and the cause is remanded to the District Court with directions to vacate its decree and to dismiss the bill of complaint upon the ground that the cause is moot. Brownlow vs. Schwartz, 261 U. S. 216, 217, 218; Alejandrino vs. Quezon, 271 U. S. 528, 535, 536; Bracken vs. Securities & Exchange Comm'n, 299 U. S. 504."

The point has been most ably and exhaustively argued by counsel upon both sides. There is no reason to discuss the question at length or to refer to the numerous decisions cited, because the problem relates solely to the duty of the District Court and will not arise in any subsequent proceedings in this case. It need only be said, therefore, that I do not think that the order of the Supreme Court was intended to affect the decision of the Circuit Court of Appeals as a controlling precedent for this Court, and that I believe that I am still bound to follow it.

It seems clear that the Supreme Court's order was merely a procedural device, to put an end to a permanent injunction in a case which the Court found itself without power to review. The question had become moot through a settlement of the strike, and it would not have been consonant with justice to leave the defendants under an injunction which could serve no present useful purpose and which might be used against them under unforeseeable conditions arising in the future, particularly as they had no opportunity to have it reviewed.

Accepting the decision of the Circuit Court of Appeals as binding upon me, I dismiss both motions.

ORDER

(Filed April 24, 1939)

AND NOW, to wit: April 24th, 1939, in accordance with an opinion this day filed, it is ORDERED that the motions of Defendants above named

(a) to set aside the verdict and the judgment entered thereon, and

(b) to grant a new trial

be and the same are hereby dismissed.

(Sgd.) W. H. KIRKPATRICK,
J.

NOTICE OF APPEAL TO CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT UNDER RULE 73-B OF THE FEDERAL RULES OF CIVIL PROCEDURE

(Filed April 25, 1939)

Notice is hereby given that William Leader and American Federation of Full Fashioned Hosiery Workers, (sometimes known as American Federation of Hosiery Workers) Philadelphia, Branch No. 1, Local 706, defendants above named, hereby appeal to the Circuit Court of Appeals for the Third Circuit from the final judgment, costs and counsel fee entered on the jury verdict in this action on April 4, 1939. The said judgment reads as follows:

JUDGMENT

"Before Kirkpatrick, J.

"AND NOW, to wit: April 4, 1939, in accordance with the verdict and the direction of the Court JUDGMENT is hereby entered in favor of Plaintiff, Apex Hosiery Company, and against the defendants, The American Federation of Full Fashioned Hosiery Workers, Philadelphia Branch No. 1, Local No. 706, and William Leader, in the sum of Seven Hundred Eleven thousand Nine Hundred Thirty-two and 55/100 ($711,932.55) together with counsel fees

in the sum of Twenty-five thousand ($25,000.00) Dollars, and costs to be taxed;

By the Court:

Attest:/s/Gilbert W. Ludwig,
Deputy Clerk."

ISADORE KATZ.

For

ISADORE KATZ,
2319 N. Broad St.,
Phila., Pa.
M. HERBERT SYME, and
BENJAMIN R. SIMONS,
Market Street Nat'l Bank
Bldg., Phila., Pa.
Attorneys for William Leader and American Federation of Full Fashioned Hosiery Workers Branch No. 1, Local No. 706.

DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL

(Filed April 25, 1939)

To the Clerk of said Court:

Sir:

Kindly prepare transcript of the record in the above cause to be filed in the office of the Clerk of the Circuit Court of Appeals for the Third Circuit under the appeal heretofore taken, and include in the said transcript the following:

1. Relevant Docket Entries.
2. Second Amended Statement of Claim.
3. Affidavit of Defense of William Leader to Second Amended Statement of Claim.
4. Affidavit of Defense of American Federation of Full Fashioned Hosiery Workers, Philadelphia Branch No. 1, Local 706, to Second Amended Statement of Claim.
5. Stenographic Transcript of Trial Proceedings—March 13, 1939, to April 3, 1939, inc. (10 Volumes).
6. The Judgment against the above-named defendants.
7. The Motion to set aside the Verdict and Judgment.

8. The Motion for New Trial.

9. The Opinion of the Trial Judge announcing dismissal of the motion to set aside the verdict and judgment, and to grant a new trial.

10. Order dismissing motions to set aside the verdict and judgment and to grant a new trial.

11. Notice of Appeal.

12. Designation of matter to be included in the Transcript on appeal.

13. Clerk's Certificate.

14. Plaintiff's Exhibits 2 to 8 inclusive, and Plaintiff's Exhibits 15, 18, 22 are not to be incorporated in the record, but may be handed up to the Court as physical exhibits at the time of argument.

(sgd) ISADORE KATZ,
Attorney for Defendants-Appellants.

Approved:
(sgd) SYLVAN H. HIRSCH,
Attorney for Plaintiff-Appellee.

CERTIFICATE OF CLERK

United States of America,
Eastern District of Pennsylvania, ss:

I, George Brodbeck, Clerk of the United States District Court in and for the Eastern District of Pennsylvania, do hereby certify that the annexed and foregoing is a true and full copy of so much of the pleas and proceedings; in the case of Apex Hosiery Company, a Pennsylvania Corp., vs. William Leader, and American Federation of Full Fashioned Hosiery Workers (sometimes known as American Federation of Hosiery Workers), Philadelphia Branch No. 1, Local 706, an unincorporated association, et al., No. 19950 March Term, 1937; as per designation of record filed, a copy of which is hereto attached, the transcript of record in the above entitled cause is to include . . . . now remaining among the records of the said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Philadelphia, this 26th day of April, A. D. 1939.

GEORGE BRODBECK,
Clerk.

(Seal)

[fol. 1398] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, MARCH TERM, 1939

No. 7085

WILLIAM LEADER and AMERICAN FEDERATION OF FULL FASHIONED HOSIERY WORKERS (Sometimes Known as American Federation of Hosiery Workers), Philadelphia, Branch No. 1, Local 706, Defendants-Appellants,

vs.

APEX HOSIERY COMPANY, Plaintiff-Appellee

ORDER OF SUBMISSION

And afterwards, to wit, the 19th day of June, 1939, come the parties aforesaid by their counsel aforesaid, and this case being called for argument sur pleadings and briefs, before the Honorable John Biggs, Jr., Honorable Albert B. Maris and Honorable William Clark, Circuit Judges, and the Court not being fully advised in the premises, takes further time for the consideration thereof,

And afterwards, to wit, on the 29th day of November, 1939, come the parties aforesaid by their counsel aforesaid, and the Court, now being fully advised in the premises, renders the following decision:

[fol. 1399] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, MARCH TERM, 1939

No. 7085

WILLIAM LEADER and AMERICAN FEDERATION OF FULL FASHIONED HOSIERY WORKERS (Sometimes Known as American Federation of Hosiery Workers), Philadelphia, Branch No. 1, Local 706, Defendants-Appellants,

v.

APEX HOSIERY COMPANY, a Pennsylvania Corporation, Plaintiff-Appellee

Appeal from the District Court of the United States for the Eastern District of Pennsylvania

OPINION—Filed November 29, 1939

Before Biggs, Maris and Clark, Circuit Judges

BIGGS, Circuit Judge:

Apex Hosiery Company, a Pennsylvania corporation, brought suit in the court below naming as defendants Amer-

ican Federation of Full Fashioned Hosiery Workers, Philadelphia Branch No. 1, Local No. 706, an unincorporated association, Leader, its president, Burge, its vice-president, Omeig, its treasurer, and Brown, its secretary, and the members of the Union, alleging violation of the antitrust laws of the United States. The amended complaint alleged [fol. 1399-1] that jurisdiction was vested in the court below by virtue of Section 4 of the Act of October 15, 1914, 38 Stat. 730;[1] (15 U. S. C. A. 15), known as the Clayton Act entitling a person injured in his business or property by acts forbidden by the antitrust laws to recover three-fold for damages sustained by him.

The facts of the controversy at bar are not in dispute. Apex Hosiery Company manufactures hosiery in its factory at Philadelphia, Pennsylvania, employs more than 2,500 persons and does an annual business of approximately $5,000,000. It procures its raw materials, principally silk and cotton, from outside the State of Pennsylvania and ships over eighty percent of its completed merchandise across state lines. The Apex Company insisted upon maintaining an open shop. The appellant union made attempts to induce the company to enter into a closed shop contract. These attempts were unsuccessful.

In the middle of April, 1937, the union made further demands for a closed shop agreement. Nothing came of those demands. On May 4, 1937, the union authorized Leader to call a strike at the Apex plant. Only eight of the company's employees at this time were members of the Union. On May 6th, at about two o'clock in the afternoon, a mob of fifteen to twenty thousand persons, consisting of employees of other hosiery mills in Philadelphia which had been unionized, gathered outside the plant and Leader made a further demand for a closed shop agreement.

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[1] "That any person who shall be injured in his business or property by reason of anything forbidden in the anti-trust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover three-fold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee."

When this was refused Leader forthwith declared a sit-down strike and immediately acts of great violence were committed against the plant and employees of the company. [fol. 1399-2] The plant was seized by members of the mob, some of whom remained in control of the plant until June 23, 1937. All of the locks on the outer doors and entrances of the plant were changed and no one was permitted entrance to the premises except by leave of those in possession. At the time of the seizure, the Apex Company had on hand approximately 134,000 dozens of finished hosiery ready for shipment against unfilled orders, eighty percent of which were from customers outside the State of Pennsylvania. The company repeatedly requested permission to ship this hosiery from the plant, but this was refused. During the course of the sit-down strike machinery was wantonly demolished or damaged to the extent of many thousands of dollars. The usurpation of the company's rights in its own property and the demolition of machinery and equipment, were conducted without interference by those local authorities charged with enforcing law and order in the City of Philadelphia. These facts which are not open to dispute show the existence of the sit-down strike in its most aggravated and illegal form. Judicial condemnation of such tactics cannot be too severe. They serve the cause of labor badly indeed and the public good fares worse before such a display of lawlessness. We have already expressed our views in this regard in our opinion in McNeely & Price Company v. National Labor Relations Board, — F. (2d) — and need not repeat here the words there used. See Labor Board v. Fansteel Corporation, 306 U. S. 240, 255, 256.

The sit-down continued until the entry on an injunction decree by the court below on June 23, 1937, pursuant to the mandate of this court in the prior equity suit of Apex Hosiery Co. v. Leader, 90 F. 2d 155. Following this decree the sit-down strike came to an end and the premises were returned to the possession of the Apex Company.

The suit at bar followed. After extensive hearings the jury returned a general verdict against Leader and the union in the sum of $237,210.85, but rendered a verdict in favor of Burge, Omeig, Brown and the individual members [fol. 1399-3] of the union. The verdict included damages for injury to machinery and equipment, fixed and carrying charges which were deemed necessary expenses for main-

taining the plant and loss of profits to the company during the period of the plant's occupancy by the strikers. The trial court trebled the amount of the verdict in accordance with Section 4 of the Clayton Act and entered judgment in triple amount. The appellants filed motions to set aside the verdict and judgment and moved for a new trial. These motions were denied by the trial judge and the present appeal was taken.

The fundamental questions raised by this appeal may be stated as follows. Was there or was there not a violation of the antitrust laws of the United States and was the damage suffered by the appellee the proximate result of such violation? We entertain no doubt that the appellants should be compelled in the appropriate forum to answer in damages to the appellee. The crux of the problem, however, is whether the appellee is entitled to recover treble damages under the Clayton Act in a district court of the United States or whether it must seek relief in the courts of the Commonwealth of Pennsylvania. In short, upon all the evidence presented are the appellees shown to have been guilty of an offense cognizable under the anti-trust laws or should the trial court have directed a verdict in their favor? The answer to these questions is to be found in the antitrust laws and in the applicable decisions construing and interpreting them.

The Provisions of the Sherman Act

The Sherman Act was approved July 2, 1890, 26 Stat. 209. Sections 1 and 2 of the Act (15 U. S. C. A. 1, 2) are, in part, as follows:

"Sec. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations is hereby declared to be illegal * * *"

[fol. 1399-4] "Sec. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, * * *"

It will be seen that by its very terms the Act includes the activities of any and all organizations in restraint of trade and renders them illegal. Congress did not limit the

restraint imposed by the Act to business combinations. It included all combinations in restraint of trade within the purview of the Act. See Loewe v. Lawler, 208 U. S. 274; Gompers v. Buck's Stove and Range Co., 221 U. S. 418; United Mine Workers v. Coronado Coal Company, 259 U. S. 344; Coronado Coal Company v. United Mine Workers, 268 U. S. 298; Bedford Cut Stone Co. v. Journeymen Stonecutters Association, 274 U. S. 37.

Following the widespread complaints of labor organizations that they had been subjected improperly to the provisions of the Sherman Act, the Clayton Act, 38 Stat. 730, was passed. Section 6 of that Act provided "That the labor of a human being is not a commodity or article of commerce." It also provided that nothing contained in the antitrust laws should "* * * be construed to forbid the existence and operation of labor * * * organizations, instituted for the purposes of mutual help, * * *". It was contended that the words employed indicated an intention on the part of Congress to remove labor from the operation of the antitrust laws, for obviously if labor is not an article of commerce it cannot be in commerce. But this contention was repudiated expressly in Duplex Printing Press Co. v. Deering, 254 U. S. 443, in which the Supreme Court said (p. 469): "The Section [section 6] assumes the normal objects of a labor organization to be legitimate, and declares that nothing in the Antitrust Laws shall be construed to forbid the existence and operation of such organizations, or to forbid their members from *lawfully* [fol. 1399-5] carrying out their *legitimate* objects; and that such an organization shall not be held in itself—merely because of its existence and operation—to be an illegal combination or conspiracy in restraint of trade. But there is nothing in the section to exempt such an organization or its members from accountability where it or they depart from its normal and legitimate objects, and engage in an actual combination or conspiracy in restraint of trade. And by no fair or permissible construction can it be taken as authorizing any activity otherwise unlawful, or enabling a normally lawful organization to become a cloak for an illegal combination or conspiracy in restraint of trade, as defined by the Anti-trust laws."

While the relief granted in the Duplex case was by way of injunction against the offending unions and the suit at bar is for money damages, we cannot see how such a dis-

tinction, viewed in the light of the decision of the Supreme Court in the cited case, would serve to remove the activities of the appellants from the purview of the Sherman Act. It follows therefore that if the record in the suit at bar will support the conclusion that the appellants engaged in a conspiracy in restraint of trade, Section 6 of the Clayton Act will not serve to remove their activities from the operation of the antitrust laws of the United States.

The Application of the Sherman Act to Business Combinations

The absolute terms of the Sherman Act were subjected early to judicial construction resulting in the so-called "rule of reason." In Hopkins v. United States, 171 U. S. 578, 592 the Supreme Court stated: "The contract condemned by the statute is one whose direct and immediate effect is a restraint upon that kind of trade or commerce which is interstate * * * To treat as condemned by the act all agreements under which, as a result, the cost of conducting an interstate commercial business may be increased would enlarge the application of the act far beyond the fair [fol. 1399-6] meaning of the language used. There must be some direct and immediate effect upon interstate commerce in order to come within the act." In Anderson v. United States, 171 U. S. 604, 615 the Supreme Court stated: "Where the subject matter of the agreement does not directly relate to and act upon and embrace interstate commerce, and where the undisputed facts clearly show that the purpose of the agreement was not to regulate, obstruct, or restrain that commerce, but that if was entered into with the object of properly and fairly operating and fairly regulating the transaction of the business in which the parties to the agreement were engaged, such agreement will be upheld as not within the statute * * *".

In Standard Oil Company v. United States, 221 U. S. 1, the United States had endeavored to dissolve that holding company which controlled a principal part of the oil industry. The Supreme Court stated at p. 66 of its opinion: "If the criterion by which it is to be determined in all cases whether every contract, combination, etc., is a restraint of trade within the intendment of the law, is the direct or indirect effect of the acts involved, then of course the rule of reason becomes the guide * * *".

The extent and intent of the interference with commerce considered against the background of social consequences, must furnish the criteria for the determination of whether or not a combination and its acts are within the scope of the Sherman Act. See Appalachian Coals, Inc. v. United States, 288 U. S. 344. In the cited case the parties to the combination controlled 74.4% of the production of coal in the Appalachian area and 11.96% of the production of bituminous coal east of the Mississippi River. Chief Justice Hughes, delivering the majority opinion of the Court stated, p. 359, "The purpose of the Sherman Anti-Trust Act is to prevent undue restraints of interstate commerce, to maintain its appropriate freedom in the public interest, to afford protection from the subversive or coercive influences of monopolistic endeavor. As a charter of freedom, the Act [fol. 1399-7] has a generality and adaptability comparable to that found to be desirable in constitutional provisions." The Chief Justice went on to say, p. 360, "The decisions establish, said this Court in Nash v. United States, 229 U. S. 373, 376, 'that only such contracts and combinations are within the act as, by reason of intent or the inherent nature of the contemplated acts, prejudice the public interests by unduly restricting competition or unduly obstructing the course of trade.'" The Chief Justice also stated, p. 372, "Good intentions will not save a plan otherwise objectionable, but knowledge of actual intent is an aid in the interpretation of facts and prediction of consequences," citing Chicago Board of Trade v. United States, 246 U. S. 231, 238.

In the more recent case of Sugar Institute, Inc. v. United States, 297 U. S. 553, 600, Chief Justice Hughes found that the Sherman Act "* * * does not go into detailed definitions. Thus in applying its broad prohibitions, each case demands a close scrutiny of its own facts. Questions of reasonableness are necessarily questions of relation and degree. In the instant case, a fact of outstanding importance is the relative position of defendants in the sugar industry. We have noted that the fifteen refiners, represented in the Institute, refine practically all the imported raw sugar processed in this country. They supply from 70 to 80 per cent of the sugar consumed. Their refineries are in the East, South, and West, and their agreements and concerted action have a direct effect upon the entire sugar trade." The Supreme Court held that the agreement im-

posed unreasonable restraints and required the cessation of the practices complained of by the United States.

In short, in respect to business combinations the Supreme Court has held there must be shown intent to restrict competition by control of supply or fixing prices of the commodity or articles under circumstances where such domination substantially affects the market or industry, and [fol. 1399-8] therefore the price to the consumer; or such intent may be inferred from the effect of the combination upon interstate commerce.

The Application of the Sherman Act to Labor Combinations

The provisions of the Sherman Act were early applied to the activities of labor unions. The first case in this field is that of Blindell v. Hagen, 54 F. 40, in which it was held that the provisions of the Sherman Act curtailed the activities of the crew of a steamship who struck and prevented the hiring of a new crew. The court was dealing with a ship, an instrumentality of commerce and the comparatively small extent of the interference with commerce in general was not permitted to remove the activities of the strikers from the operation of the Sherman Act. The law was applied rigorously and literally. See also Waterhouse v. Comer, 55 F. 149.

The first decision of the Supreme Court applying the Sherman Act to the activities of labor organizations was Loewe v. Lawler, supra. In this case the American Federation of Labor had attempted to compel Loewe & Company, manufacturers of hats, to operate upon a closed shop basis. When this demand met with refusal, a strike ensued at the company's plant and a secondary boycott was inaugurated throughout the United States. Suit for damages was brought against the union and its individual members by the company as in the case at bar. The Supreme Court held that the secondary boycott was illegal and that the suit might be maintained against the individual members of the union. The ratio decidendi of Hopkins v. United States, supra, was emphasized by the appellees but the Supreme Court, having in mind the size of the combination, stated that the 9,000 members of the United Hatters of North America had acted in concert with the 1,400,000 members of the American Federation of Labor, compelling the great majority of the manufacturers of fur hats in the United [fol. 1399-9] States to unionize their plants. The Court

found that the hatters intended to interfere directly with interstate commerce by means of the secondary boycott and reversed the decision of the court below which had dismissed the complaint upon demurrer. After trial and judgment in favor of the company the case came before the Supreme Court for the second time and was decided upon the same principles of law. 235 U. S. 522.

In the case of United Mine Workers v. Coronado Company, 259 U. S. 344, known as the first Coronado case, the receiver for the company which controlled the Coronado Coal Company and other companies desired to operate the coal properties upon a non-union basis despite an agreement to the contrary with the United Mine Workers. A strike resulted attended by great violence by the parties to the controversy. The mine properties were greatly damaged. Suit was brought by the companies against the United Mine Workers of America, twenty-seven local unions and a number of individuals, charging them with a conspiracy to restrain interstate commerce in coal and with destruction of property. Treble damages were prayed for. The unions demurred to the complaint, in effect denying that the Sherman Act conferred jurisdiction upon the court. The District Court sustained the demurrer but was reversed by the Circuit Court of Appeals. A trial was had in which substantial damages were awarded, which were trebled. A further appeal was taken to the Circuit Court of Appeals which sustained the judgment. Thereupon the defendants appealed to the Supreme Court which held that though the local unions were responsible for the destructive actions of their members, none the less there was no proof that the unions had engaged in a conspiracy to monopolize or restrain interstate commerce in defiance of the Sherman Act.

Chief Justice Taft, delivering the unanimous opinion of the Supreme Court, stated, p. 408, "Obstruction to coal mining is not a direct obstruction to interstate commerce in coal, although it, of course, may affect it by reducing the [fol. 1399-10] amount of coal to be carried in that commerce. We have had occasion to consider the principles governing the validity of congressional restraint of such indirect obstructions to interstate commerce in Swift & Co. v. United States, 196 U. S. 375; United States v. Patten, 226 U. S. 525; United States v. Ferger, 250 U. S. 199; * * * It is clear from these cases that if Congress deems certain recurring practices, though not really part of interstate

commerce, likely to obstruct, restrain or burden it, it has the power to subject them to national supervision and restraint. Again, it has the power to punish conspiracies in which such practices are part of the plan, to hinder, restrain or monopolize interstate commerce. But in the latter case, the intent to injure, obstruct or restrain interstate commerce must appear as an obvious consequence of what is to be done, or be shown by direct evidence or other circumstances."

Chief Justice Taft went on to say, p. 409, "This case is very different from Loewe v. Lawler * * * There the gist of the charge held to be a violation of the Anti-Trust Act was the effort of the defendants, members of a trade union, by a boycott against a manufacturer of hats to destroy his interstate sales in hats. The direct object of the attack was interstate commerce."

The Supreme Court applied the criterion of the intent of the strikers to affect interstate commerce without regard to whether or not the actions of the combination in preventing the distribution of coal from the mines, could actually affect the volume of commerce in coal or the price of it. Chief Justice Taft found, p. 412, that the strike was a local strike, "local in its origin and motive, local in its waging, and local in its felonious and murderous ending." The Supreme Court thereupon reversed the judgment rendered against the United Mine Workers and their officers, remanding the cause for further proceedings.

In Coronado Coal Company v. United Mine Workers of America, 268 U. S. 295, 310, known as the second Coronado [fol. 1399-11] case, the Supreme Court had additional evidence before it. This evidence included testimony as to the responsibility of union officials for the strike and to the effect that the production of coal of the Bache-Denman mines was more than 5,000 tons a day and not 5,000 tons a week as had been supposed. The Court held that when it was the intent of those interfering with the production of coal "* * * to restrain and control the supply of coal moving in interstate commerce * * *" this constituted a direct violation of the antitrust laws. Chief Justice Taft concluded by stating, "We think there was substantial evidence at the second trial in this case tending to show that the purpose of the destruction of the mines was to stop the production of non-union coal and prevent its shipment to markets of other States than Arkansas, where it would by

competition tend to reduce the price of the commodity and affect injuriously the maintenance of rates for union labor in competing mines, and that the direction by the District Judge to return a verdict for the defendants other than the International Union was erroneous." The Supreme Court thereupon affirmed the judgment in favor of the International Union of United Mine Workers and reversed that in favor of the district and local unions, remanding the cause for further proceedings.

In United Leather Workers v. Herkert, 265 U. S. 457, the complainants had built up valuable business in manufacturing trunks and leather goods and in selling the greater number of these articles in interstate commerce. The bill of complaint expressly alleged that with the intention of ruining this interstate business, a strike was commenced by the United Leather Workers and that this strike was carried on through illegal picketing and intimidation of workers, the strikers being well aware that the products of the complainants when made were shipped through interstate commerce. The Supreme Court held that a mere reduction in the amount of articles to be shipped in interstate commerce and the illegal prevention of their manufacture did not bring the activities of the strikers within the purview of the Sherman Act. The Court by Chief [fol. 1399-12] Justice Taft stated, p. 471, "This review of the cases makes it clear that the mere reduction in the supply of an article to be shipped in interstate commerce, by the illegal and tortious prevention of its manufacture, is ordinarily an indirect and remote obstruction to that commerce. It is only when the intent or necessary effect upon such commerce in the article is to enable those preventing the manufacture to monopolize the supply, control its price or discriminate between its would-be purchasers, that the unlawful interference with its manufacture can be said directly to burden interstate commerce."

In Levering & G. Co. v. Morrin, 289 U. S. 103, the complainants were engaged in fabricating and erecting structural iron and steel and attempts were made by unions in the City of New York to compel them to employ only union labor in this work. The bill of complaint alleged that all the steel used by the complainants in the City of New York was transported from other states and that the success of the respondents' efforts would result in the destruction of the complainants' interstate traffic in steel. Mr. Justice

Sutherland delivered the opinion of the Supreme Court and stated, p. 107, "All this, however, is no more than to say that respondents' interference with the erection of the steel in New York will have the effect of interfering with the bringing of steel from other states. Accepting the allegations of the bill at their full value, it results that the sole aim of the conspiracy was to halt or suppress local building operations as a means of compelling the employment of union labor, not for the purpose of affecting the sale or transit of materials in interstate commerce. *Use* of the materials was purely a local matter, and the suppression thereof the result of a purely local aim. Restraint of interstate commerce was not an object of the conspiracy. Prevention of the local use was in no sense a means adopted to effect such a restraint. It is this exclusively local aim, and not the fortuitous and incidental effect upon interstate commerce, which gives character to the conspiracy. Compare Bedford Cut Stone Co. v. Stone Cutters Assn., 274 U. S. 37, [fol. 1399-13] 46-47; Anderson v. Shipowners Assn., 272 U. S. 359, 363, 364. If thereby the shipment of steel in interstate commerce was curtailed, that result was incidental, indirect and remote, and, therefore, not within the antitrust acts, as this court, prior to the filing of the present bill, had already held."

Further citation of authorities would serve no useful purpose. We therefore turn to the application of the principles enunciated to the case at bar.

The Principles of the Cited Cases as Applied to the Case at Bar.

The evidence in the case at bar, with the possible exception of the instance of the refusal of the appellants to permit finished goods to be shipped which we shall presently discuss, did not disclose an intent on the part of the appellants to restrain commerce. On the contrary their intent was to unionize the appellee's plant, an action local in motive and local in effect. The effect upon interstate commerce was merely indirect, incidental and remote. The appellants therefore were not guilty of engaging in a combination or conspiracy to restrain commerce. United Mine Workers v. Coronado Coal Co. (first Coronado case), supra; United Leather Workers v. Herkert, supra; Levering & G. Co. v. Morrin, supra.

Furthermore, although the appellee did a business in the manufacture and sale of full fashioned hosiery of approximately $5,000,000 a year, this was a small part of the total industry. In 1936, the annual national shipments of full fashioned hosiery were 37,400,782 dozen pairs. In 1937, the annual national shipments amounted to 39,678,494 dozen pairs. The record shows that during the last eight months of 1937, the appellee shipped 274,791 dozen pairs of stockings. Even if the appellee's output was quadrupled, it would amount to less than three percent of the total national output in the industry. The interruption of production incurred by the appellee through the acts of the appellants [fol. 1399-14] had small effect upon interstate commerce. The combination was not such that by reason of the intent of the conspirators or the inherent nature of their acts public interest was prejudiced by unduly restricting competition or obstructing trade. Appalachian Coals, Inc., supra, Nash v. United States, supra. It follows, we think, that the appellants were not guilty of violating the Sherman Act in refusing to permit the shipment of completed merchandise to fill orders outside the State of Pennsylvania. The appellees have, however, cited authorities in support of a contrary view, two of which require brief discussion.

In Buyer v. Guillan, 271 F. 65, a combination between members of longshoremen's unions resulted in a refusal by longshoremen to handle goods brought to the docks by trucks driven by non-union men. This was held to be a combination in restraint of trade in violation of the Sherman Act and an injunction was issued. In O'Brien v. United States, 290 F. 185, a strike was in progress at rolling mills at Newport, Kentucky. The mill management arranged to send a steel billet to a Cincinnati manufacturer. The manufacturer sent a truck to the mill to get the billet. The defendants induced the driver to unload the billet after it had been placed upon the truck, and were indicted under the Sherman Act. The Circuit Court of Appeals of the Sixth Circuit sustained the convictions of the defendants, stating at p. 187, "Not only was the billet 'prepared for delivery and marked', but carriage across the river was in the natural course of business at this point, and it is to be assumed that the truck carried the usual evidence that it was an Ohio car." The court went on to state that "• • • the existence of the offense is found not in the amount of

commerce restrained, but in the direct and absolute character of the restraint."

In both of these cases, the goods were actually in transit and in each case there was a secondary boycott of the kind which the Supreme Court had declared illegal in Duplex v. Deering, supra. Such elements are lacking in the case at bar. We do not think these cases controlling.

[fol. 1399-15] The decision of the Supreme Court in Industrial Association of San Francisco v. United States, 268 U. S. 64, is illuminating upon this aspect of the case at bar. The defendants had proposed to eliminate trade union domination of the local building industry and had combined to establish open shop employment by causing building permits to be refused to those contractors who would not support the open shop plan. The district court enjoined this plan as a violation of the antitrust laws, and found that permits were to be required for the purchase of building materials and supplies brought from other states into California and that even if limited to California produced materials, the permit system interfered with the free movement of building materials into California. The Supreme Court reversed this decree and ordered the bill dismissed, holding that interferences with materials shipped into California were widely separated and insignificant in view of the size of the local building industry and were therefore insufficient to establish a conspiracy in restraint of commerce.

Mr. Justice Sutherland, delivering the opinion of the Court, said at p. 84, "* * * the interferences which may have been unlawful are reduced to some three or four sporadic and doubtful instances, during a period of nearly two years. And when we consider that the aggregate value of the materials involved in these few and widely separated instances, was, at the utmost, a few thousand dollars, compared with an estimated expenditure of $100,000,000 in the construction of buildings in San Francisco during the same time, their weight, as evidence to establish a conspiracy to restrain interstate commerce or to establish such restraint in fact, becomes so insignificant as to call for the application of the maxim, *de minimis non curat lex*. To extend a statute intended to reach and suppress real interference with the free flow of commerce among the states, to a situation so equivocal and so lacking in sub-

stance, would be to cast doubt upon the serious purpose with which it was framed."

[fol. 1399-16] We are of the opinion that the maxim is equally applicable to the appellant's refusal in the case at bar to permit shipments designated for interstate commerce to leave the Apex plant. This action, although clearly wrongful, did not bring their conspiracy within the prohibition of the Sherman Act. The evidence in the case at bar supports but one conclusion, namely that the interruption to commerce was by way of stoppage of the appellee's manufacturing operations, was comparatively slight and indirect, and that the intent and purpose of the appellants at the time of the formation of their conspiracy and thereafter was to unionize the Apex plant, not to restrain commerce or to affect prices within the industry. The verdict was necessarily based on the existence of an intent by the appellants to form a combination in restraint of trade and commerce. The record does not furnish support for the finding of such intent. It follows that the appellee failed to make out a case for treble damages under the Sherman and Clayton Acts, that the learned trial judge should have directed a verdict in favor of the appellants and that he erred in refusing to grant the appellants' motion to set aside the verdict and judgment against them and to enter judgment in their favor.

The National Labor Relations Act and the Decisions Construing it Do Not Expand the Meaning of the Word "Commerce" as Employed in the Antitrust Laws.

This court in its opinion in the injunction suit between these parties reported in 90 F. (2nd) 155, 159, reversing the decree of the district court, reported in 20 F. Supp. 138, placed emphasis upon an expanded meaning of the word "commerce" purportedly created by the National Labor Relations Act (29 U. S. C. A. 151-166) and the decisions of the Supreme Court in National Labor Relations Board v. Jones and Laughlin Steel Corporation, 301 U. S. 1, and National Labor Relations Board v. Friedman-Harry Marks Clothing Company, 301 U. S. 58. The word commerce under this expanded definition was construed to include the activ- [fol. 1399-17] ities of the appellants and their agents. We now conclude that this was unwarranted.

Congress used a very broad word, "affect," in the National Labor Relations Act, thus evidencing its intention

to embrace the entire field of interstate commerce confided to it by the Constitution. Upon the other hand in the Sherman Act, Congress employed the word "restraint," which has a different and plainly more restricted connotation. That this is so becomes the more obvious in the light of the Supreme Court decisions which we have already discussed, in which it is declared that Congress intended to legislate only in respect to unreasonable restraints of commerce. In other words, in order to come within the purview of the Sherman Act and thus to confer jurisdiction upon the Federal courts commerce must not only be affected, but also must be restrained and restrained to an unreasonable degree.

A somewhat similar contention was made in Blankenship v. Kurfman, 96 F. (2nd) 450, 456, and in respect to it the court stated: "The recent decisions in cases under the National Labor Relations Act are instructive for the purpose of determining whether certain activities affect commerce. But these cases do not involve problems determining the existence of a conspiracy or combination in restraint of commerce." The questions involved in the decisions of the Supreme Court in the Labor Board cases which we have cited were as to the extent of congressional power under the commerce clause of the Constitution. The question presented by the case at bar and by the earlier injunction proceedings is the extent to which Congress has exercised that power in the antitrust laws. The latter question must be decided upon the authority of cases arising under and construing the antitrust laws. The meaning of the words "* * * contract, combination * * * or conspiracy in restraint of trade or commerce" employed in Section 1 of the Sherman Act cannot be expanded by the definitions of the National Labor Relations Act or the cases construing that Act.

[fol. 1399-18] In the injunction proceedings this court concluded that because the appellants committed unlawful acts they were therefore guilty of a conspiracy in restraint of trade. This conclusion we now think was erroneous. The test is not whether unlawful acts were committed by the appellants but whether a combination or conspiracy was formed by them with the intent to restrain commerce. If such a conspiracy had been formed by them it would be in violation of the Sherman Act though carried out by entirely

lawful and peaceable means. Duplex Printing Co. v. Deering, supra, pp. 467, 468.

The decree of this court in Apex Hosiery Co. v. Leader, supra, was reversed by the Supreme Court with directions to dismiss the bill of complaint since the case was moot. Leader v. Apex Hosiery Co., 302 U. S. 656. The decree of this court in the injunction proceedings must therefore be considered as having been vacated. It is no longer binding as a precedent, as the law of the case, or as res judicata. South Spring Gold Co. v. Amador Gold Co., 145 U. S. 300; Brownlow v. Schwartz, 261 U. S. 216. As a consequence we are at liberty to consider anew all questions presented by the record of the case at bar. But if this were not so we would now feel it necessary to overrule our decision in the former case, since, as we have shown, it was erroneous. Our judgment in this respect is confirmed by legal commentators generally. See 51 Harvard Law Review 169; 15 New York University Law Quarterly Review, 135; 39 Columbia Law Review 1247.

The judgment of the court below is reversed and the cause is remanded with directions to enter judgment for the appellants in accordance with Rule 50 (b) of the Federal Rules of Civil Procedure.

A true Copy
Teste:

——— ———, Clerk of the United States Circuit Court of Appeals for the Third Circuit.

[fol. 1400] In United States Circuit Court of Appeals for the Third Circuit March Term, 1939

No. 7085

William Leader and American Federation of Full Fashioned Hosiery Workers, (Sometimes known as American Federation of Hosiery Workers), Philadelphia Branch No. 1, Local 706, Defendants-Appellants,

vs.

Apex Hosiery Company, Plaintiff-Appellee

Judgment—Filed November 29, 1939

On appeal from the District Court of the United States, for the Eastern District of Pennsylvania.

This cause came on to be heard on the transcript of record from the District Court of the United States, for the Eastern District of Pennsylvania, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby reversed, with costs, and the cause remanded to the said District Court with directions to enter judgment for the appellants in accordance with Rule 56 (b) of the Federal Rules of Civil Procedure.

Philadelphia, November 29, 1939.

John Biggs, Jr., Circuit Judge.

[File endorsement omitted.]

[fol. 1401] Petition for Rehearing

Covering 14 pages filed Dec. 20. 1939.
Omitted from this Print.
It was Denied and Nothing more by order of Dec. 27, 1939.

[fol. 1402] In United States Circuit Court of Appeals for the Third Circuit

[Title omitted]

Order Denying Petition for Rehearing—Filed December 27, 1939

And Now, to wit, December 27, 1939, after due consideration, the petition for rehearing in the above-entitled case is hereby denied.

Philadelphia.

John Biggs, Jr., Circuit Judge.

[File endorsement omitted.]

[fol. 1403] Clerk's certificates to foregoing transcript omitted in printing.

[fol. 1404] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed February 26, 1940

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

IN THE

Supreme Court of the United States

October Term, 1939.

No. 638.

APEX HOSIERY COMPANY, a Pennsylvania Corporation,
Petitioner.

v.

WILLIAM LEADER and AMERICAN FEDERATION OF FULL FASHIONED HOSIERY WORKERS, PHILADELPHIA, BRANCH NO. 1, LOCAL NO. 706,
Respondents,

Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit and Brief in Support Thereof.

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INDEX TO PETITION.

	Page
Summary Statement of Matters Involved	1
Jurisdiction	6
Questions Presented	7
Reasons Relied on for the Allowance of the Writ	7

INDEX TO BRIEF.

	Page
Opinions of the Courts Below	9
Argument.	
I. The Circuit Court Erred in Setting Aside the Jury's Finding of Fact That Respondents Intended to Restrain Interstate Commerce, Since This Finding Was Amply Supported by the Evidence	10
II. The Circuit Court's Holding That the Effect on Interstate Commerce of Respondents' Stoppage of Petitioner's Operations Was Indirect and Remote Is in Plain Conflict With Decisions of This Court	14
III. The Circuit Court Erred in Holding That a Restraint of Trade Must Be of an Unreasonable Amount of the National Volume of Commerce in the Commodity in Order to Constitute a Violation of the Sherman Act. This Test Is in Complete Conflict With Decisions of This Court and Other Circuit Courts of Appeals	17
Conclusion	21

CASES CITED.

	Page
Apex Hosiery Co. v. Leader, 90 F. (2d) 155 (1937)	4
Bedford Cut Stone Co. v. Journeymen Stone Cutters' Assn., 274 U. S. 37, 71 L. ed. 916 (1927)	13
Bluefields S. S. Co. v. United Fruit Co., 243 Fed. 1 (C. C. A. 3rd, 1917)	14
Coronado Coal Co. v. United Mine Workers, 268 U. S. 295, 69 L. ed. 963 (1925)	18
Duplex Printing Press Co. v. Deering, 254 U. S. 443, 65 L. ed. 349 (1921)	19
Industrial Association of San Francisco v. United States, 268 U. S. 64, 69 L. ed. 849 (1925)	14
Lawlor v. Loewe, 235 U. S. 522, 59 L. ed. 341 (1915)	18
National Labor Relations Board v. Fainblatt, 306 U. S. 601, 83 L. ed. 1014 (1939)	19
National Labor Relations Board v. Friedman-Harry Marks Clothing Co., 301 U. S. 58, 81 L. ed. 921 (1937)	15
National Labor Relations Board v. Jones & Laughlin Steel Corp., 301 U. S. 1, 81 L. ed. 893 (1937)	14, 16
O'Brien v. United States, 290 Fed. 185 (1923)	21
Patterson v. United States, 222 Fed. 599 (1915)	21
Santa Cruz Fruit Packing Co. v. National Labor Relations Board, 303 U. S. 453, 82 L. ed. 954 (1938)	16
Steers v. United States, 192 Fed. 1 (1911)	20
United Leather Workers v. Herkert, 265 U. S. 457, 68 L. ed. 1104 (1924)	12
United States v. Patten, 226 U. S. 525, 57 L. ed. 333 (1913)	14

STATUTES.

	Page
Act of 1890, c. 647, 26 Stat. 209, 15 U. S. C. A. Sec. 1 (Sherman Act)	1
Section 4 of the Clayton Act (Act of 1914, c. 323, 38 Stat. 731, 15 U. S. C. A. Sec. 15)	6
Act of February 13, 1925 (43 Stat. 938, 28 U. S. C. A. Sec. 347 (a))	6
National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C. A. Sec. 151 et seq.)	14

IN THE

Supreme Court of the United States

No. . October Term, 1939.

APEX HOSIERY COMPANY, A PENNSYLVANIA CORPORATION,

Petitioner.

v.

WILLIAM LEADER AND AMERICAN FEDERATION OF FULL FASHIONED HOSIERY WORKERS, PHILADELPHIA BRANCH NO. 1, LOCAL NO. 706,

Respondents.

PETITION FOR A WRIT OF CERTIORARI.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petition of Apex Hosiery Company respectfully sets forth the following:

SUMMARY STATEMENT OF MATTERS INVOLVED.

The controlling issue involved in the present case is whether the actions of the respondents constitute a restraint of commerce in violation of the Act of 1890, c. 647, 26 Stat. 209, 15 U. S. C. A. Sec. 1 (popularly known as the Sherman Act).

This suit was instituted by the Apex Hosiery Company (hereinafter referred to as Apex) against the American Federation of Hosiery Workers, Branch No. 1, Philadelphia, a labor union, (hereinafter referred to as Union), and

its officers, to recover the damages Apex sustained to its plant, machinery and business as a result of the Union's violation of the Sherman Act under the following set of facts:

Apex is the second largest hosiery concern in the country (R. 101), its factory being located in Philadelphia, Pennsylvania, where it employs over 2500 persons (R. 252), and does an annual business of $5,000,000. Its principal raw materials are silk, which it receives from Japan (R. 148) and cotton, which it receives from the South (R. 148). More than 80 per cent. of its sales and shipments of finished merchandise are interstate (R. 109).

Apex operated a non-union shop (R. 110), but at all times collectively bargained with its employees on questions of hours, wages and conditions of work (R. 110). Prior to May 6, 1937, there had been no controversy between employees and management (R. 123). No complaint was ever filed with either the State or National Labor Relations Board, by either the Union or any employee of Apex (R. 122).

In April of 1937, *when the Union had only eight members among the 2500 employees of Apex* (R. 735), it sent a letter to Apex demanding a closed shop union agreement (R. 121), the execution of which would have been illegal under Sections 8 (3) and 9 (a) of the National Labor Relations Act, since the Union was not the chosen representative of a majority of the Apex employees. From then until May 6, 1937, no discussion with Apex of the terms of such an agreement was sought by the Union (R. 121).

On May 6, 1937, when the Union's membership in the Apex plant was still only eight out of 2500 (R. 735), the Union organized a demonstration, ordering out for that purpose union members of other hosiery mills (R. 82, 90,

94), with the result that early in the afternoon a mob of more than 15,000 persons gathered outside the Apex plant (R. 260). At about 2:30 P. M., William Leader, president of the Union, stood at the head of the mob at the closed front door of the Apex mill, and demanded to see its president (R. 183). Leader was informed that the president of Apex would not confer with him while a mob of people was outside the mill, but that he would confer with him at his attorney's office (R. 127). Thereupon, amid pounding on the front door of the mill (R. 128), Leader was heard to exclaim: "I announce a strike at the Apex Hosiery Company and you can rest assured before the day is out, there will be a sit-down strike, and it will not reopen until it opens as a closed shop" (R. 184).

Immediately following this announcement, a barrage of missiles, iron bars and clubs shattered the plant windows, and through them a company of raiders was bodily thrown into the plant (R. 128); the front door was crashed in and a mob of thousands stormed into the mill (R. 261). Office partitions, records, desks, typewriters, adding machines and filing cabinets were destroyed (R. 128, 193). The president of Apex was hit by a stone and struck in the back of the neck by an ink well (R. 128). The general manager of Apex was beaten by members of the mob (R. 262). An elevator operator was beaten on the head with an iron pipe, knocked down, and kicked in the face, resulting among other injuries, in a fractured jaw, necessitating three weeks hospitalization (R. 198, 199). Another employee was so beaten that he sustained five broken ribs and required two and one-half weeks of hospitalization (R. 203).

While the plant was thus being laid waste by the mob, respondent Leader, accompanied by the Union's attorney and a committee of its members, came into the office of the

president of the company and demanded, "Now, are you ready to sign this agreement?" (R. 129.) The president replied that he would not sign under such conditions (R. 129). Thereupon, Leader went into the wareroom and organized the sit-downers who were to hold possession of the plant. Standing upon a table, Leader addressed several hundred persons gathered about him (R. 222) instructing them that they were to be the sit-downers (R. 222); that the Union would not let them leave the plant until Apex signed a closed shop agreement (R. 223); that the Union would take care of them and supply them with cots, blankets and food (R. 223); that they were to organize and appoint a chairman, and that it was just the same as if they were in the army (R. 223). Meanwhile, members of the group passed out "pledge cards" which they forced everyone to sign (R. 227), by which the signer pledged himself to go on a sit-down strike at Apex until the company signed a closed shop agreement (R. 229). Later in the day, while Leader was still on the premises, food, cots and blankets were brought into the mill by the Union for the sit-downers (R. 227,228).

Thereupon, the sit-downers organized themselves, elected a chairman, and set up various committees (R. 769). The next day all locks on all gates and entrances to the mill were changed and only the sit-downers were given keys, no one being allowed to enter or leave the mill without their permission (R. 313, 410, 787).

The sit-downers forcibly maintained exclusive possession of the mill from May 6, 1937 until June 23, 1937, when they were evicted by order of the Circuit Court of Appeals for the Third Circuit in an injunction proceeding based on the respondent Union's violation of the Sherman Act (*Apex Hosiery Co. v. Leader*, 90 F. (2d) 155 (1937)). Dur-

ing the period of their occupancy of the Apex mill, the sit-downers damaged and wrecked a total of 134 legging and footing machines, thirty machines being wrecked on June 10th (R. 421), and 104 machines on June 22d (R. 440, 445-457), which was the day after the Circuit Court of Appeals by injunctive decree, had ordered the sit-downers out of the plant. In addition, there was extensive damage to other property and equipment.

Pursuant to the conspiracy, the Union, during the entire period the sit-downers were in possession of the Apex plant, paid them strike benefits (R. 332, 339-354); supplied them with food from the Union's central strike kitchen (R. 359); and furnished them medical care (R. 360).

On May 6, 1937, when its plant was seized by respondents, Apex had on hand approximately 134,000 dozens of finished hosiery, valued at approximately $800,000. (R. 150, 151) ready for shipment against unfilled orders, 80 per cent. of which were to be shipped to customers outside of Pennsylvania (R. 522). During the sit-down, Apex on three different occasions specifically requested the Union's permission to remove this finished merchandise for shipment against orders on hand (R. 618-621), but the Union's reply was that not one dozen pairs of hose could be shipped until a closed shop agreement was signed (R. 620).

As a result of the damage to the company's plant, machinery and equipment, the plant was unable to resume even partial operations until August 19, 1937 (R. 271), and it was not until November 1, 1937, that its normal operations could be resumed (R. 271).

The case was tried before Judge Kirkpatrick and a jury, and on April 3, 1939, the jury returned a general verdict for the plaintiff (petitioner herein) in the sum of

$237,310.85, the itemization of which was set forth by the jury in answers to written interrogatories given them by the trial judge (R. 1363-1367). The trial judge thereupon trebled the verdict to $711,932.55 in accordance with the provisions of the Sherman Act as amended by Section 4 of the Clayton Act (Act of 1914, c. 323, 38 Stat. 731, 15 U. S. C. A. Sec. 15).

Thereupon the defendants (respondents herein) filed an appeal with the Circuit Court of Appeals for the Third Circuit, which Court, on November 29, 1939, reversed the judgment on the ground that the above facts did not establish a violation of the Sherman Act. In so holding, the Circuit Court overruled its own decision rendered June 21, 1937, in the injunction proceedings instituted by Apex to oust the sit-downers, in which it had held that these same facts did establish respondents' violation of the Sherman Act.

A Petition for Rehearing filed with the Circuit Court of Appeals, was denied on December 27, 1939.

JURISDICTION.

1. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925 (43 Stat. 938, 28 U. S. C. A. Sec. 347 (a)).

2. The date of the judgment of the Circuit Court of Appeals for the Third Circuit herein sought to be reviewed is November 29, 1939. A Petition for Rehearing filed with said Circuit Court of Appeals was denied on December 27, 1939.

QUESTIONS PRESENTED.

1. Did not the Circuit Court of Appeals err in setting aside the jury's finding of fact that respondents intended to restrain interstate commerce, when this finding was amply supported by direct evidence, including the respondents' deliberate refusal, when requested, to permit petitioner's interstate shipments of finished merchandise?

2. Did not respondents' stoppage of petitioner's manufacturing and shipping operations have a direct and immediate effect on interstate commerce?

3. Did not the Circuit Court of Appeals err when it held that the Sherman Act was not violated because an unreasonably great volume of commerce was not restrained?

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

1. The decision of the Circuit Court of Appeals for the Third Circuit that the effect on interstate commerce of respondents' stoppage of petitioner's operations was indirect and remote is in plain conflict with decisions of this Court holding that stoppage, by industrial strife, of the manufacturing and shipping operations of a plant "in the flow of commerce" has a direct and immediate effect and burden upon interstate commerce.

2. The decision by the Circuit Court of Appeals for the Third Circuit that there cannot be a restraint of trade in violation of the Sherman Act unless an unreasonably great volume of commerce is restrained, is in direct conflict with the decisions of this Court and of other Circuit Courts of Appeals.

3. The Circuit Court of Appeals for the Third Circuit has now reversed its own decision, rendered only two years previously, in an action between the same parties, in which it held, upon the same facts and issues as in the case at bar, respondents had violated the Sherman Act.

4. The Circuit Court of Appeals for the Third Circuit has decided a question of national importance to both labor and industry, in conflict with applicable decisions of this Court.

Wherefore, your petitioner respectfully prays that a Writ of Certiorari be issued out of and under the seal of this Honorable Court, directed to the Circuit Court of Appeals for the Third Circuit, commanding that Court to certify and send to this Court on the date to be designated in said Writ, a full and complete transcript of the record of all proceedings in this case numbered and titled on its docket, "No. 7085, March Term, 1939, William Leader et al. v. Apex Hosiery Company", to the end that said case may be reviewed and determined by this Court as provided by law, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem proper.

APEX HOSIERY COMPANY,

By SYLVAN H. HIRSCH,
Attorney for Petitioner.

IN THE

SUPREME COURT OF THE UNITED STATES.

No. . October Term, 1939.

APEX HOSIERY COMPANY, A PENNSYLVANIA CORPORATION,

Petitioner,

v.

WILLIAM LEADER AND AMERICAN FEDERATION OF FULL FASHIONED HOSIERY WORKERS, PHILADELPHIA BRANCH NO. 1, LOCAL NO. 706,

Respondents.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI.

OPINIONS OF THE COURTS BELOW.

The opinion of the District Court for the Eastern District of Pennsylvania was filed April 24, 1939, and has not been officially reported. It appears in the record at page 1389.

The opinion of the Circuit Court of Appeals for the Third Circuit was filed November 29, 1939, and has not been officially reported. It appears at the end of the record. A petition for rehearing, filed with the Circuit Court of Appeals on December 20, 1939, was denied without opinion, on December 27, 1939.

ARGUMENT.

I. The Circuit Court Erred in Setting Aside the Jury's Finding of Fact That Respondents Intended to Restrain Interstate Commerce, Since This Finding Was Amply Supported by the Evidence.

In reversing the judgment entered on the jury's verdict, the Circuit Court of Appeals stated (Opinion, page 17):

> "The verdict was necessarily based on the existence of an intent by the appellants to form a combination in restraint of trade and commerce. The record does not furnish support for the finding of such intent."

In reaching this conclusion, the Circuit Court completely disregarded fundamental principles of law governing the respective functions of the court and jury. When the Circuit Court concluded as a fact, that the respondents did not intend to restrain commerce, it erroneously invaded the exclusive province of the jury, which found as a fact that respondents did intend to restrain interstate commerce—a finding which was fully supported by the following evidence:

(a) A "pledge card" distributed by respondent union prior to the "sit-down" strike in which the signer pledged to join the union and "to go on a sit-down strike" at the Apex mill "to bring about full recognition of our demands and the union" (R. 229).

(b) The respondent union's deliberate and violent seizure of petitioner's plant; exclusion of petitioner's officers and employees (R. 313, 410, 787) and its stoppage of

petitioner's manufacturing and shipping operations for a period of approximately seven weeks, until finally evicted by an order of the Circuit Court.

(c) The declarations of William Leader, president of respondent union, on the day petitioner's plant was invaded and seized, that the Union would hold possession of the plant until its closed shop demands were granted (R. 223).

(d) The respondent union's supplying its sit-down strikers with cots and blankets (R. 227, 228), food (R. 359) and strike pay (R. 332) pursuant to its plan to remain in complete and exclusive possession of petitioner's plant until their demands were granted.

(e) The respondent union's repeated refusals (R. 618-621) to grant petitioner's requests for permission to remove and ship $800,000. of finished merchandise from its factory, 80 per cent. of which was for orders on hand from customers located outside of Pennsylvania, such requests being met by the president of respondent union with the statement (R. 620):

> "War is war, and we won't let you remove one dozen pair of hosiery against any order until you give us a closed shop agreement."

This evidence, showing a preconceived plan by respondent union and its officers to seize and hold petitioner's plant and prevent its manufacturing and interstate shipments of finished merchandise until their demands were granted, was clear and unequivocal proof of respondent's intent to restrain interstate commerce. To assert, as did the Circuit Court, that this evidence did not furnish support for the jury's finding of respondent's intent to restrain

interstate commerce, and to reverse the jury's finding of this fact because it was contrary to that which the Court might have found if it had been the fact finding body, was clearly error and an usurpation of the jury's function as the sole fact finding body. Indeed, this holding by the Circuit Court was in complete disregard of the express recognition by this Court that the evidence produced by petitioner is the very evidence which does prove an intended restraint of interstate commerce. This Court, in *United Leather Workers v. Herkert*, 265 U. S. 457, 68 L. ed. 1104 (1924) held that the defendant union had not violated the Sherman Act only because of the absence of the very evidence which was found to exist in the case at bar. Said this Court (page 463):

> "There was no evidence whatever to show that complainants were obstructed by the strike or the strikers in shipping to other states the products they had ready to ship, or in their receipt of materials from other states, needed to make their goods. While the bill averred that defendants had instituted a boycott against complainants, and were prosecuting the same by illegal methods, there was no evidence whatever that any attempt was made . . . to interfere with their interstate shipments of goods ready to ship."

It is respectfully submitted that where the Circuit Court fell into error on this question was in its misconstruction of the word "intent" as being the equivalent of the word "purpose" or "object". Said the Court (Opinion, page 17):

> "The evidence in the case at bar supports but one conclusion, namely . . . that the intent and purpose of the appellants at the time of the formation

of their conspiracy and thereafter was to unionize the Apex plant, not to restrain commerce or to affect prices within the industry."

But the intent, in the sense of "purpose" or "object", of the labor union involved in every Sherman Act case decided by this Court has been merely to unionize the particular plant involved, rather than to restrain commerce. Nevertheless this Court has squarely held that such an ultimate object does not preclude a finding of intent to restrain commerce in violation of the Sherman Act. In *Bedford Cut Stone Co. v. Journeymen Stone Cutters' Assn.*, 274 U. S. 37, 71 L. ed. 916 (1927) this Court, at page 47 said:

> "Respondents' chief contention is that 'their sole and only purpose . . . was to unionize the cutters and carvers of stone at the quarries'. And it may be conceded that this was the ultimate end in view.
>
> . . . . . .
>
> "A restraint of interstate commerce cannot be justified by the fact that the ultimate object of the participants was to secure an ulterior benefit which they might have been at liberty to pursue by means not involving such restraint."

Therefore, it is respectfully submitted that since the evidence produced in this case fully supported the jury's finding that respondents intended to restrain interstate commerce, the Circuit Court erred in reversing the judgment on the ground that there was no such proof. Moreover, where the evidence establishes, as in the case at bar, that respondents restrained interstate commerce by their seizure and retention of petitioner's plant and prevention of its manufacturing and interstate shipments, intent to

restrain will be presumed as a matter of law, since it is well settled that conspirators are presumed to have intended the necessary, natural and probable consequences of their unlawful acts. *United States v. Patten*, 226 U. S. 525, 57 L. ed. 333 (1913); *Industrial Association of San Francisco v. United States*, 268 U. S. 64, 69 L. ed. 849 (1925); *Bluefields S. S. Co. v. United Fruit Co.*, 243 Fed. 1 (C. C. A. 3rd, 1917).

II. The Circuit Court's Holding That the Effect on Interstate Commerce of Respondents' Stoppage of Petitioner's Operations Was Indirect and Remote Is in Plain Conflict With Decisions of This Court.

The second reason relied upon by the Circuit Court for holding that petitioner failed to prove a restraint of trade in violation of the Sherman Act, was that the stoppage of petitioner's receipt of raw materials from points outside the state, its manufacturing operations and its shipment of finished merchandise to points outside the state, had but an indirect, incidental and remote effect upon interstate commerce.

This holding is in flat contradiction to the holding of this Court on the identical issue in the recent cases challenging the constitutionality of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C. A. Sec. 151 et seq.). In *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, 81 L. ed. 893 (1937), this Court held that the stoppage, by industrial strife, of the operations of a manufacturing plant which, as in the case of petitioner, received its raw materials from points outside the state and shipped its finished merchandise to points outside the state, had a *direct and immediate*

rather than an indirect, incidental and remote, effect on interstate commerce. Said Mr. Chief Justice Hughes, speaking for this Court (page 41):

> "Giving full weight to respondent's contention with respect to a break in the complete continuity of the 'stream of commerce' by reason of respondent's manufacturing operations, *the fact remains that the stoppage of those operations by industrial strife would have a most serious effect upon interstate commerce. In view of respondent's far flung activities, it is idle to say that the effect would be indirect or remote. It is obvious that it would be immediate and might be catastrophic.*" (Italics ours.)

The same reasoning and principles were expressly held by this Court to govern the companion case of *National Labor Relations Board v. Friedman-Harry Marks Clothing Co.*, 301 U. S. 58, 81 L. ed. 921 (1937), which involved a plant far smaller in size and output than petitioner's.

The Circuit Court, however, failed to follow the express ruling of this Court in the foregoing cases on the sole ground that the word "affect" as used in the National Labor Relations Act is broader in scope than the word "restraint" as used in the Sherman Act, saying (Opinion, page 18):

> "Congress used a very broad word, 'affect', in the National Labor Relations Act, thus evidencing its intention to embrace the entire field of interstate commerce confided to it by the Constitution. Upon the other hand in the Sherman Act, Congress employed the word 'restraint', which has a different and plainly more restricted connotation."

It should be noted that the words "affecting commerce" are defined in the National Labor Relations Act

(Sec. 2 (7)) to include "burdening or obstructing commerce", which has always been considered by this Court as synonymous with "restraining commerce". But, in any event, the decisions of this Court in the *Jones and Laughlin* and companion cases did not turn on the meaning or scope of the word "affect" in the National Labor Relations Act. The issue in those cases was *whether the stoppage of operations in a particular manufacturing plant had a direct effect upon commerce*, for unless the effect was direct, Congress would not have had the power to prohibit local practices resulting in such a stoppage. When this Court decided that issue by holding that such a stoppage had a direct effect upon commerce, it announced a legal principle in no way confined to nor dependent upon the wording of the National Labor Relations Act, but one that was applicable to the present case or to any case where that issue is to be decided.

A full discussion of this question is also to be found in the opinion of this Court in *Santa Cruz Fruit Packing Co. v. National Labor Relations Board*, 303 U. S. 453, 82 L. ed. 954 (1938).

Under the foregoing decisions of this Court, therefore, *respondents' unlawful stoppage of petitioner's operations had a direct effect upon commerce.* Once this direct effect upon commerce is shown, the necessary element of intent to restrain commerce is presumed as a matter of law, and the Sherman Act therefore is violated. In *National Labor Relations Board v. Jones & Laughlin, supra*, after an extensive review of Sherman Act labor cases, Mr. Chief Justice Hughes said (page 40):

> ". . . when the 'intent of those unlawfully preventing the manufacture or production is shown to be to re-

strain or control the supply entering and moving in interstate commerce. . . . their action is a direct violation of the Anti-Trust Act'. 268 U. S. p. 310. *And the existence of that intent may be a necessary inference from proof of the direct and substantial effect produced by the employees' conduct.* Industrial Asso. v. United States, 268 U. S. p. 81, 69 L. ed. 855, 45 S. Ct. 403." (Italics ours.)

It is therefore respectfully submitted that the Circuit Court erred in holding that the effect on interstate commerce of the complete stoppage of petitioner's operations, as a result of respondents' conspiracy, was indirect and remote, rather than direct and immediate, and that therefore the Sherman Act was not violated.

III. The Circuit Court Erred in Holding That a Restraint of Trade Must Be of an Unreasonable Amount of the National Volume of Commerce in the Commodity in Order to Constitute a Violation of the Sherman Act. This Test Is in Complete Conflict With Decisions of This Court and Other Circuit Courts of Appeals.

The conclusion of the Circuit Court that an unreasonable amount of trade must be restrained to render the activities of a labor union a violation of the Sherman Act is inconsistent with previous decisions of this Court, and the Circuit Court clearly erred when it said (Opinion, page 14):

"Furthermore, although the appellee did a business in the manufacture and sale of full fashioned hosiery of approximately $5,000,000. a year, this was a small part of the total industry. In 1936, the annual national shipments of full fashioned hosiery were 37,400,782 dozen pairs. In 1937, the annual national shipments amounted to 39,678,494 dozen pairs. The record

shows that during the last eight months of 1937, the appellee shipped 274,791 dozen pairs of stockings. Even if the appellee's output was quadrupled, it would amount to less than three percent of the total national output in the industry. The interruption of production incurred by the appellee through the acts of the appellants had small effect upon interstate commerce."

And again (Opinion page 18):

"In other words, in order to come within the purview of the Sherman Act, and thus to confer jurisdiction upon the Federal courts commerce must not only be affected, but also must be restrained and restrained into an unreasonable degree."

The quantity of shipments affected has never been held to be the test in labor combination cases (as distinguished from monopoly cases) arising under the Sherman Act, and the contention of respondents, adopted by the Circuit Court, that the volume affected must be unreasonably large, has been repudiated and rejected by this Court in labor combination cases. In the second Coronado Coal Case, 268 U. S. 295, 69 L. ed. 963 (1925), the defendant union in its brief (page 78) strongly urged that a restraint of the production in plaintiff's mines of 5000 tons of coal a day (compared to a national production of from 10,000,000 to 15,000,000 tons of coal per week) was too insignificant to constitute a restraint of commerce in violation of the Sherman Act. Nevertheless, this Court held that the Act had been violated, *although the plaintiff's production was but one-fifth to one-third of one per cent. of the national production of coal.*

Similarly, in *Lawlor v. Loewe*, 235 U. S. 522, 59 L. ed. 341 (1915) this Court permitted recovery of damages under

the Sherman Act, although the plaintiff employed only 230 persons and manufactured only $400,000. worth of hats annually—a very unsubstantial percentage of the total hat production of the country.

And again, in *Duplex Printing Press Co. v. Deering*, 254 U. S. 443, 65 L. ed. 349 (1921) this Court held the Sherman Act violated by the activities of a labor union even though the plaintiff's production was less than 8 per cent. of the total production of printing presses in the country.

Recognition of the principle that the volume of commerce restrained is not controlling has been nowhere more succinctly given than in the recent opinion of this Court in *National Labor Relations Board v. Fainblatt*, 306 U. S. 601, 83 L. ed. 1014 (1939) in which Mr. Justice Stone, speaking for the Court, stated (page 606):

> "The exercise of Congressional power under the Sherman Act, the Clayton Act, the Federal Trade Commission Act, or the National Motor Vehicle Theft Act, has never been thought to be constitutionally restricted *because in any particular case the volume of the commerce affected may be small.*" (Italics ours.)

In requiring that commerce be restrained to an "unreasonable degree", the Circuit Court purported to apply the so-called "rule of reason", but this rule has been applied by this Court only in the monopoly cases arising under the Sherman Act. In the labor cases, the only test has been whether the union's unlawful activities had a direct or an indirect effect upon commerce.

In addition to the foregoing decisions of this Court, Circuit Court decisions have uniformly rejected the contention that an unreasonable quantity of commerce must

be restrained by conspirators' unlawful acts in order that the Sherman Act be violated. In *Steers v. United States*, 192 Fed. 1 (1911), in which defendants had restrained the shipment of only four hogsheads of tobacco, this contention was squarely rejected by the Circuit Court of Appeals for the Sixth Circuit, which stated in its opinion, at page 4:

> "The first ground of demurrer was that one shipment by one shipper to another state does not amount to that interstate trade, the restraint of which is forbidden. This argument is based upon . . . the supposed holding in the recent Standard Oil and Tobacco Cases, 221 U. S. 1, 106, 31 Sup. Ct. 502, 632, 55 L. ed. 619, 663, to the effect that, in order to be covered by this statute, the restraint of trade must be of considerable quantity; that is, of unreasonable amount."
>
> . . . . . .
>
> "We do not find in the Standard Oil and Tobacco Cases any holding that a direct restraint of trade must affect an unreasonably great amount of commerce in order to be within the prohibition. As we read these opinions, the matter under consideration, from the standpoint of reason, was not the amount of merchandise or traffic affected by the restriction, but the character and extent of the restriction itself; and it was thought that, if such restriction reasonably pertained to lawful results, it was not of itself necessarily forbidden. *These opinions contain no justification for the idea that a direct and absolute restraint, bearing no reasonable relation to lawful means of accomplishing lawful ends, can be permitted only because the volume of traffic affected is not very great.* (Italics ours.)

And in answer to the same argument advanced against the invoking of the Sherman Act, where the defendants' combination restrained *but a single shipment of a steel*

billet, the Circuit Court, in *O'Brien v. United States*, 290 Fed. 185 (1923), held that:

> ". . . the existence of the offense is found not in the amount of commerce restrained, but in the direct and absolute character of the restraint."

To the same effect is *Patterson v. United States*, 222 Fed. 599 (1915).

Accordingly, it is respectfully submitted that the ruling of the Circuit Court is contrary to the decisions of this Court and of other Circuit Courts of Appeals, since it is based upon the erroneous principle that an unreasonable volume of commerce must be restrained before the Sherman Act can be said to have been violated.

Conclusion.

In conclusion, it is respectfully submitted that this case is one particularly appropriate for review by this Court, since:

(A) The jury's finding of respondents' conspiracy in restraint of commerce was amply supported by evidence:

(1) That respondents deliberately planned and carried out the violent seizure of petitioner's plant, and its unlawful retention.

(2) That respondents intended to and did prevent petitioner's receipt of raw materials, its manufacturing, and its shipment of finished merchandise interstate until their demand for a closed shop had been met (compliance with which would have been illegal under the Wagner Act because respondent union had but eight members among petitioner's 2500 employees).

(3) That respondents, during the period of their exclusive possession of petitioner's plant, deliberately

refused petitioner's repeated requests for permission to remove and ship interstate more than $800,000. of finished merchandise against orders then on hand.

(B) The Circuit Court of Appeals has now reversed its own decision rendered only two years previously in an action between the same parties and involving the same facts and issues and in which it held the Sherman Act to have been violated.

(C) The present decision is in plain conflict with the uniform decisions of this Court and of other Circuit Courts of Appeals.

(D) The question whether the respondents' stoppage of petitioner's operations constitutes a violation of the Sherman Act is one of national importance to both labor and industry.

Respectfully submitted,

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IN THE

Supreme Court of the United States

October Term, 1939.

No. 638.

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Respondents.

BRIEF FOR PETITIONER.

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INDEX.

	Page
Opinions of the Courts Below	1
Ground for Jurisdiction	1
Statement of the Case	2
Specification of Errors to be Urged	7
Summary of Argument	8
Argument	9
I. Introduction.	
The Rights of Labor Will in No Way Be Impaired or Destroyed by a Decision That the Sherman Act Was Violated in This Case	9
II. Scope of the Sherman Act	13
III. Respondents' Conspiracy Violated the Sherman Act	15
1. When Respondents Completely Stopped Petitioner's Manufacturing and Shipping Operations, Commerce Was Directly Affected and Restrained	16
(A) The Stoppage of Operations of a Plant "In the Flow of Commerce" Directly Affects, Burdens and Restrains Commerce	16
(B) Even Apart From the Jones & Laughlin Case, When Respondents Prevented Apex From Shipping Its Finished Merchandise Interstate, They Directly Restrained Commerce	20
2. The Evidence Clearly Shows and the Jury Found That Respondents Intended to Restrain Commerce	23

INDEX (Continued).

Page

(A) The Jury Found as a Fact That Respondents Intended to Restrain Commerce 23

(B) Even in the Absence of the Finding by the Jury, Respondents' Intent to Restrain Commerce Will Be Presumed as a Matter of Law 26

IV. The Circuit Court Erred in Holding That the Sherman Act Was Not Violated Because a Large Proportion of the National Volume of Commerce in Hosiery Was Not Restrained. Such a Test Is in Complete Conflict With the Decisions of This Court and Other Circuit Courts of Appeals... 30

Conclusion 36

CASES CITED.

Page

Aeolian Co. v. Fischer, 40 F. (2d) 189 (1930) 23

American Steel Foundries v. Tri-City Central Trades Council, 257 U. S. 184, 66 L. ed. 189 (1921) 14

Apex Hosiery Co. v. Leader, 90 F. (2d) 155 (1937) ... 5, 6

Bedford Cut Stone Company v. Journeymen Stone Cutters' Assn., 274 U. S. 37, 71 L. ed. 916 (1927) 14, 15, 21, 28

Carter v. Carter Coal Co., 298 U. S. 238, 8 L. ed. 1160 (1936) 21

Coronado Coal Co. v. United Mine Workers, 268 U. S. 295, 69 L. ed. 963 (1925) 14, 15, 26, 33

Duplex Printing Press Co. v. Deering, 254 U. S. 443, 65 L. ed. 349 (1921) 14, 15, 22, 29, 33

Gompers v. Buck's Stove & Range Co., 221 U. S. 418, 55 L. ed. 797 (1911) 14

Industrial Association of San Francisco v. United States, 268 U. S. 64, 69 L. ed. 849 (1925) 29

Lawlor v. Loewe, 235 U. S. 522, 59 L. ed. 341 (1915) ... 14, 33

Leader v. Apex Hosiery Co., 108 F. (2d) 71 (1939) ... 1, 6

Loewe v. Lawlor, 208 U. S. 274, 52 L. ed. 488 (1908) ... 14, 15

Local 167, etc., v. United States, 291 U. S. 293, 78 L. ed. 804 (1934) 14, 23

National Labor Relations Board v. Fainblatt, 306 U. S. 601, 83 L. ed. 1014 (1939) 33

National Labor Relations Board v. Fansteel Metallurgical Corp., 306 U. S. 240, 83 L. ed. 627 (1939) . 11, 37

National Labor Relations Board v. Friedman-Harry Marks Clothing Co., 301 U. S. 58, 81 L. ed. 921 (1937) 17, 18, 20, 27

National Labor Relations Board v. Jones & Laughlin Steel Corp., 301 U. S. 1, 81 L. ed. 893 (1937), 15, 16, 17, 18, 19, 20, 23, 27

O'Brien v. United States, 290 Fed. 185 (1923) 35

CASES CITED (Continued).

Page

Patterson v. United States, 222 Fed. 599 (1915), cert. den. 238 U. S. 635, 59 L. ed. 1499 (1915) 35

A. L. A. Schechter Poultry Corp. v. United States, 295 U. S. 495, 79 L. ed. 1570 (1935) 15, 19

Standard Oil Co. v. United States, 221 U. S. 1, 55 L. ed. 619 (1911) 31

Steers v. United States, 192 Fed. 1 (1911) 34

United Leather Workers' v. Herkert, 265 U. S. 457, 68 L. ed. 1104 (1924) 21

United States v. American Tobacco Company, 221 U. S. 106, 55 L. ed. 663 (1911) 31, 32

United States v. Brims, 272 U. S. 549, 71 L. ed. 403 (1926) 14

United States v. Patten, 226 U. S. 525, 57 L. ed. 333 (1913) 26

STATUTES CITED.

Act of 1890, c. 647, 26 Stat. 209, 15 U. S. C. A. Sec. 1 (Sherman Act) 2, 13

Constitution, Article I, Section 8, Clause 3 14

Section 4 of the Clayton Act (Act of 1914, c. 323, 38 Stat. 731, 15 U. S. C. A. Sec. 15) 6

Section 6 of the Clayton Act (Act of 1914, c. 323, Sec. 6, 38 Stat. 731, 15 U. S. C. A. Sec. 17) 9

Section 20 of the Clayton Act (Act of 1914, c. 323, Sec. 20, 38 Stat. 738, 29 U. S. C. A. Sec. 52) 9

Sections 8 (3) and 9 (a) of the National Labor Relations Act (Act of 1935, c. 372, Sec. 8 (3), 49 Stat. 452, 29 U. S. C. A. Sec. 158 (3); Sec. 9 (a), 49 Stat. 453, 29 U. S. C. A. Sec. 159 (a)) 3, 36

Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925 (43 Stat. 938, 28 U. S. C. A. Sec. 347 (a)) 1

IN THE

Supreme Court of the United States.

No. 638. October Term, 1939.

APEX HOSIERY COMPANY, A PENNSYLVANIA CORPORATION,

Petitioner,

v.

WILLIAM LEADER AND AMERICAN FEDERATION OF FULL FASHIONED HOSIERY WORKERS, PHILADELPHIA BRANCH NO. 1, LOCAL NO. 706,

Respondents.

OPINIONS OF THE COURTS BELOW.

The opinion of the District Court for the Eastern District of Pennsylvania was filed April 24, 1939, and has not been officially reported. It appears in the record at page 1389.

The opinion of the Circuit Court of Appeals for the Third Circuit was filed November 29, 1939, and is reported in 108 F. (2d) 71. It appears in the record at page 1399.

GROUND FOR JURISDICTION.

The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925 (43 Stat. 938, 28 U. S. C. A. Sec. 347 (a)).

STATEMENT OF THE CASE.

The controlling issue involved in the present case is whether the actions of the respondents constitute a restraint of commerce in violation of the Act of 1890, c. 647, 26 Stat. 209, 15 U. S. C. A. Sec. 1 (hereinafter referred to as the Sherman Act).

This suit was instituted by the Apex Hosiery Company, petitioner (hereinafter referred to as Apex) against the American Federation of Hosiery Workers, Branch No. 1, Philadelphia, a labor union (hereinafter referred to as Union), and its officers, to recover the damages Apex sustained to its plant, machinery and business as a result of the defendants' violation of the Sherman Act, under the following set of facts:

Apex is the second largest hosiery concern in the country (R. 101), its factory being located in Philadelphia, Pennsylvania, where it employs over 2500 persons (R. 252), and does an annual business of $5,000,000. Its principal raw materials are silk, which it receives from Japan (R. 148) and cotton, which it receives from the South (R. 148). More than 80 per cent. of its sales and shipments of finished merchandise are interstate (R. 109).

Apex operated a non-union shop (R. 110), but at all times collectively bargained with its employees on questions of hours, wages and conditions of work (R. 110). Prior to May 6, 1937, there had been no controversy between employees and management (R. 123). No complaint was ever filed with either the State or National Labor Relations Board, by either the Union or any employee of Apex (R. 122).

In April of 1937, *when the Union had only eight members among the 2500 employees of Apex* (R. 735), it sent a

letter to Apex demanding a closed shop union agreement (R. 121), the execution of which would have been illegal under Sections 8 (3) and 9 (a) of the National Labor Relations Act, since the Union was not the chosen representative of a majority of the Apex employees. From then until May 6, 1937, no discussion with Apex of the terms of such an agreement was sought by the Union (R. 121).

On May 6, 1937, when the Union's membership in the Apex plant was still only eight out of 2500 (R. 735, 1400), the Union organized a demonstration, ordering out for that purpose union members of other hosiery mills (R. 82, 90, 94), with the result that early in the afternoon a mob of more than 15,000 persons gathered outside the Apex plant (R. 260). At about 2:30 P. M., William Leader, president of the Union, stood at the head of this mob at the closed front door of the Apex mill, and demanded to see its president (R. 183). Leader was informed that the president of Apex would not confer with him while a mob of people was outside the mill, but that he would confer with him at his attorney's office (R. 127). Thereupon, amid pounding on the front door of the mill (R. 128), Leader exclaimed: "I announce a strike at the Apex Hosiery Company and you can rest assured before the day is out, there will be a sit-down strike, and it will not reopen until it opens as a closed shop" (R. 184).

Immediately following this announcement, a barrage of missiles, iron bars and clubs shattered the plant windows, and through them a company of raiders was bodily thrown into the plant (R. 128); the front door was crashed in and a mob of thousands stormed into the mill (R. 261). Office partitions, records, desks, typewriters, adding machines and filing cabinets were destroyed (R. 128, 193). The president

of Apex was hit by a stone and struck in the back of the neck by an inkwell (R. 128). The general manager of Apex was beaten by members of the mob (R. 262). An elevator operator was struck on the head with an iron pipe, knocked down, and kicked in the face, resulting in, among other injuries, a fractured jaw, necessitating three weeks hospitalization (R. 198, 199). Another employee was so beaten that he sustained five broken ribs and required two and one-half weeks of hospitalization (R. 203).

While the plant was thus being laid waste by the mob, respondent Leader, accompanied by the Union's attorney and a committee of its members, came into the office of the president of the company and demanded, "Now, are you ready to sign this agreement?" (R. 129.) The president replied that he would not sign under such conditions (R. 129). Thereupon, Leader went into the wareroom and organized the sit-downers who were to hold possession of the plant. Standing upon a table, Leader addressed several hundred persons gathered about him (R. 222), instructing them that they were to be the sit-downers (R. 222); that the Union would not permit them to leave the plant until Apex signed a closed shop agreement (R. 223); that the Union would take care of them and supply them with cots, blankets and food (R. 223); that they should organize and appoint a chairman, and that it was just the same as if they were in the army (R. 223). Meanwhile, members of the group passed out "pledge cards" which they forced everyone to sign (R. 227), by which the signer pledged himself to go on a sit-down strike at Apex until the company signed a closed shop agreement (R. 229). Later in the day, while Leader was still on the premises, food, cots and blankets were brought into the mill by the Union for the sit-downers (R. 227, 228).

Thereupon, the sit-downers organized themselves, elected a chairman and set up various committees (R. 769). The next day all locks on all gates and entrances to the mill were changed. Only the sit-downers were given keys, no one being allowed to enter or leave the mill without their permission (R. 313, 410, 787). During the entire period the sit-downers were in possession of the Apex plant, the Union paid them strike benefits (R. 332, 339-354), supplied them with food from the Union's central strike kitchen (R. 359), and furnished them medical care (R. 360).

The sit-downers forcibly maintained exclusive possession of the Apex mill from May 6, 1937 until June 23, 1937, when they were evicted by order of the Circuit Court of Appeals for the Third Circuit in an injunction proceeding based on the respondent Union's violation of the Sherman Act (APEX HOSIERY CO. v. LEADER, 90 F. (2d) 155 (1937)). During the period of their occupancy of the Apex mill, the sit-downers damaged and wrecked a total of 134 legging and footing machines, 30 machines being wrecked on June 10th (R. 421), and 104 machines on June 22d (R. 440, 445-457), which was the day after the Circuit Court of Appeals, by injunctive decree, had ordered the sit-downers out of the plant. In addition, there was extensive damage to other property and equipment of the Company.

On May 6, 1937, when its plant was seized by respondents, Apex had on hand approximately 130,000 dozens of hosiery (R. 518, 519) valued at approximately $800,000 (R. 150, 151) ready for shipment against unfilled orders (R. 519), 80 per cent. of which were to be shipped to customers outside of Pennsylvania (R. 522). During the sit-down, Apex on three different occasions specifically requested the Union's permission to remove this finished merchandise for

shipment against orders on hand (R. 618-621), but the Union's reply, through its president, William Leader, was that not one dozen pairs of hose could be shipped until a closed shop agreement was signed (R. 620). All the negotiations and conferences with Apex during the sit-down strike were reported back by the union officers to the general union membership (R. 403, 404).

As a result of the wreckage to the company's machinery and equipment, the plant was unable to resume even partial operations until August 19, 1937 (R. 271), and it was not until November 1, 1937, that its normal operations could again be resumed (R. 271).

The case was tried before Judge Kirkpatrick and a jury. At the trial petitioner agreed to limit any recovery to the general funds of the Union by voluntarily waiving a verdict against the individual members of the Union and execution process against their individual property (R. 1306). On April 3, 1939, the jury returned a general verdict for the plaintiff (petitioner) against the Union and its president, Leader (respondents) in the sum of $237,310.85, which sum was fully itemized by the jury in answers to 17 written interrogatories given them by the trial judge (R. 1363-1367). The trial judge then trebled this verdict to $711,932.55 in accordance with the provisions of the Sherman Act as amended by Section 4 of the Clayton Act (Act of 1914, c. 323, 38 Stat. 731, 15 U. S. C. A. Sec. 15).

Thereupon the present respondents filed an appeal with the Circuit Court of Appeals for the Third Circuit, which, on November 29, 1939, reversed the judgment of the lower court on the ground that the above facts did not establish a violation of the Sherman Act (108 Fed. (2d) 71). In so holding, the Circuit Court overruled its own

previous decision rendered on June 21, 1937 (90 Fed. (2d) 155) in the injunction proceedings instituted by Apex to oust the sit-downers, when the Circuit Court held that these same facts did establish respondents' violation of the Sherman Act.

A Petition for Rehearing filed with the Circuit Court of Appeals was denied on December 27, 1939.

On January 12, 1940, petitioner filed its Petition in this Court for a Writ of Certiorari to the Circuit Court of Appeals for the Third Circuit, which Petition, on February 26, 1940, was granted.

SPECIFICATION OF ERRORS TO BE URGED.

The Circuit Court of Appeals erred:

1. In holding that respondents' violent and forcible stoppage of petitioner's manufacturing and interstate shipping operations by the unlawful seizure and occupation of petitioner's plant had only an indirect and remote effect on interstate commerce, and that therefore the Sherman Act was not violated.

2. In holding that the record did not support the jury's finding that respondents intended to restrain commerce, and that therefore the Sherman Act was not violated.

3. In holding that the Sherman Act was not violated by respondents because an unreasonably great volume of commerce was not restrained by their conspiracy.

4. In reversing the judgment of the District Court.

SUMMARY OF ARGUMENT.

Petitioner instituted this action against respondents under the Sherman Act to recover the damages sustained when respondents, pursuant to a conspiracy, forcibly invaded, seized and held exclusive possession of petitioner's plant for a period of seven weeks, and deliberately wrecked its machinery and equipment, thereby completely stopping and preventing its manufacturing and interstate shipping operations. Petitioner contends that respondents' conspiracy violated the Sherman Act because:

1. Respondents' complete stoppage of petitioner's manufacturing and interstate shipping operations, totalling $5,000,000. per year, constituted a direct burden upon and restraint of commerce under the decisions of this Court.

2. Respondents' forcible prevention of petitioner's removal and interstate shipment of $800,000. of finished merchandise on hand constituted a direct restraint of commerce under the decisions of this Court.

3. Respondents' conspiracy was carried out with the proved intent of restraining interstate commerce. The Circuit Court erred when it held that there was no evidence of such intent because respondents' sole "intent" was to secure a closed shop. In so holding, the Circuit Court confused "intent" with ultimate "purpose" or "object" of respondents' conspiracy.

4. The necessary consequence of respondents' unlawful acts was to restrain commerce and therefore even had there not been ample proof of actual intent to restrain commerce, such an intent would be presumed as a matter of law.

Therefore, respondents' conspiracy having restrained commerce in violation of the Sherman Act, the Circuit Court erred in reversing the judgment entered for the petitioner in the District Court.

ARGUMENT.

I. INTRODUCTION.

The Rights of Labor Will in No Way Be Impaired or Destroyed by a Decision That the Sherman Act Was Violated in This Case.

Respondents contended in the Courts below that the rights of labor, including the right to strike, will be impaired or destroyed by a determination that the Sherman Act has been violated in the present case. Any such attempt by respondents to pose as the protector of the rights of labor is for the sole purpose of escaping the consequences of their own wilful violation of the Sherman Act.

Employees have the right to stop work, strike, peacefully picket and to persuade others to do likewise, in order to enforce their demands. These are labor's lawful means of exercising pressure upon employers to attain the objectives of labor, and even should these lawful acts result in a restraint of commerce, they are expressly exempted from the operation of the Sherman Act by Sections 6 and 20 of the Clayton Act.*

---

* Sec. 6 of the Clayton Act (Act of 1914, c. 323, Sec. 6, 38 Stat. 731, 15 U. S. C. A. Sec. 17) provides:

"The labor of a human being is not a commodity or article of commerce. Nothing contained in the anti-trust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from *lawfully* carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the anti-trust laws."

Sec. 20 of the Clayton Act (Act of 1914, c. 323, Sec.

However, the record facts set forth in the "Statement of the Case" show conclusively that in the present case there never was a "strike" in the accepted sense. When respondent union found itself unable, prior to May 6, 1937,

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20, 38 Stat. 738, 29 U. S. C. A. Sec. 52) provides:

"No restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by *peaceful* means so to do; or from attending at any place where any such person or persons may *lawfully* be, for the purpose of *peacefully* obtaining or communicating information, or from *peacefully* persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by *peaceful* and *lawful* means so to do; or from paying or giving to, or withholding from any person engaged in such dispute, any strike benefits or other moneys or things of value; or from *peaceably* assembling in a *lawful* manner, and for *lawful* purposes; *or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States.*" (Italics ours.)

to enroll more than 8 members among the 2500 Apex employees (R. 735), desiring to circumvent the delay which would have ensued if *lawful* means of unionization were adopted, it determined to enforce its demands by deliberately invading, seizing and holding exclusive possession of the Apex mill, and demolishing its property, machinery and equipment. These acts of violence and destruction were not the spontaneous, sporadic acts sometimes known to follow provocation or incitation in bitterly waged labor disputes, such as skirmishes between striking and non-striking employees or between strikers and police. They were the deliberately conceived and flagrantly unlawful actions of a group which deemed itself above the law.

Respondents' unlawful conduct was well characterized by the Circuit Court, in the present case, in these words (R. 1401):

> "During the course of the sit-down strike machinery was wantonly demolished or damaged to the extent of many thousands of dollars. The usurpation of the company's rights in its own property and the demolition of machinery and equipment, were conducted without interference by those local authorities charged with enforcing law and order in the City of Philadelphia. These facts which are not open to dispute show the existence of the sit-down strike in its most aggravated and illegal form. Judicial condemnation of such tactics cannot be too severe. They serve the cause of labor badly indeed and the public good fares worse before such a display of lawlessness."

This Court, while fully recognizing labor's right to strike, has nevertheless unequivocally stated that this right contemplates the conduct of a strike *by lawful means*. In the recent case of NATIONAL LABOR RELATIONS BOARD v. FAN-

STEEL METALLURGICAL CORP., 306 U. S. 240, 83 L. ed. 627 (1939), which also involved a sit-down strike, violence and illegal plant seizure, Mr. Chief Justice Hughes, in speaking for this Court, said (page 253):

> "The employees had the right to strike *but they had no license to commit acts of violence or to seize their employer's plant.* We may put on one side the contested questions as to the circumstances and extent of injury to the plant and its contents in the efforts of the men to resist eviction. The seizure and holding of the buildings was itself a wrong apart from any acts of sabotage. But in its legal aspect the ousting of the owner from lawful possession is not essentially different from an assault upon the officers of an employing company, or the seizure and conversion of its goods, or the despoiling of its property or other unlawful acts in order to force compliance with demands. *To justify such conduct because of the existence of a labor dispute or of an unfair labor practice would be to put a premium on resort to force instead of legal remedies and to subvert the principles of law and order which lie at the foundations of society.*" (Italics ours.)

And again at page 256:

> "Congress also recognized the right to strike,—that the employees could lawfully cease work at their own volition because of the failure of the employer to meet their demands. Section 13 provides that nothing in the Act 'shall be construed so as to interfere with or impede or diminish in any way the right to strike'. *But this recognition of 'the right to strike' plainly contemplates a lawful strike,*—the exercise of the unquestioned right to quit work. . . ."
>
> "*Here the strike was illegal in its inception and prosecution.* As the Board found, it was initiated by the decision of the Union committee 'to take over and

hold two of the respondent's "key" buildings.' It was pursuant to that decision that the men occupied the buildings and the work stopped. This was not the exercise of 'the right to strike' to which the Act referred. *It was not a mere quitting of work and statement of grievances in the exercise of pressure recognized as lawful. It was an illegal seizure of the buildings in order to prevent their use by the employer in a lawful manner and thus by acts of force and violence to compel the employer to submit.*" (Italics ours.)

So too in the present case, respondents chose to substitute for their lawful right to strike, the outrageous acts of violence, property destruction and plant seizure, of which they stand condemned. By this choice they surrendered the immunity from the Sherman Act which the Clayton Act grants to labor organizations provided they engage in *lawful* activities.

Therefore the rights of labor will in no way be impaired or destroyed by a decision that respondents have violated the Sherman Act, unless these rights are held to include the right of a union forcibly to invade and retain exclusive possession of a manufacturing plant, wantonly to destroy its machinery and equipment, and to block the flow of interstate commerce in order to enforce its demands for a closed shop at a time when it had but 8 members among 2500 employees.

II. SCOPE OF THE SHERMAN ACT.

Section 1 of the Sherman Act (Act of 1890, c. 647, 26 Stat. 209, 15 U. S. C. A. Sec. 1) provides:

> "Every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal."

The Sherman Act was enacted by Congress as a regulation of "commerce among the several States" under the power given it by the commerce clause of the Constitution (Article 1, Section 8, Clause 3), which provides:

> "The Congress shall have Power . . . . to regulate Commerce with Foreign Nations, and among the several States, and with the Indian Tribes."

There are no words in the Sherman Act limiting the field or scope of interstate commerce to which it is meant to apply. Its language is as broad as the Constitutional provision quoted above.

Despite the fact that during the past 50 years since the Sherman Act was enacted, it has constantly been contended that labor unions are not subject to its provisions, the Act has never been so limited in its interpretation. It has long been firmly established by the decisions of this Court *without a single dissent*, that labor organizations are subject to the Act, when, pursuant to a conspiracy, they engage in *unlawful* activities which restrain or obstruct the free flow of interstate commerce. Loewe v. Lawlor, 208 U. S. 274, 52 L. ed. 488 (1908); Gompers v. Buck's Stove & Range Co., 221 U. S. 418, 55 L. ed. 797 (1911); Lawlor v. Loewe, 235 U. S. 522, 59 L. ed. 341 (1915); Duplex Printing Press Co. v. Deering, 254 U. S. 443, 65 L. ed. 349 (1921); American Steel Foundries v. Tri-City Central Trades Council, 257 U. S. 184, 66 L. ed. 189 (1921); Coronado Coal Co. v. United Mine Workers, 268 U. S. 295, 69 L. ed. 963 (1925); United States v. Brims, 272 U. S. 549, 71 L. ed. 493 (1926); Bedford Cut Stone Co. v. Journeymen Stone Cutters' Association, 274 U. S. 37, 71 L. ed. 916 (1927); Local 167 v. United States, 291 U. S. 293, 78 L. ed. 804 (1934).

III. RESPONDENTS' CONSPIRACY VIOLATED THE SHERMAN ACT.

The Sherman Act is violated when it is shown that a combination or conspiracy existed which resulted in a restraint of commerce. The existence of respondents' conspiracy in the case at bar was conclusively proved to and found by the jury, and neither the respondents nor the Circuit Court have questioned this finding.

Therefore, the only question remaining for determination in the present case is whether respondents' conspiracy restrained commerce. In construing the Sherman Act, this Court has held that there is a restraint of commerce in violation of the Act:

1. When the conspiracy *directly* affects commerce.

   BEDFORD CUT STONE COMPANY v. JOURNEYMEN STONE CUTTERS' ASSN., 274 U. S. 37, 71 L. ed. 916 (1927);

   DUPLEX PRINTING PRESS CO. v. DEERING, 254 U. S. 443, 65 L. ed. 349 (1921);

   LOEWE v. LAWLOR, 208 U. S. 274, 52 L. ed. 488 (1908);

   NATIONAL LABOR RELATIONS BOARD v. JONES & LAUGHLIN STEEL CORP., 301 U. S. 1, 81 L. ed. 893 (1937) at 39.

2. When the conspirators *intended* to restrain commerce, even if ordinarily the conspirators' acts affected commerce only indirectly.

   CORONADO COAL CO. v. UNITED MINE WORKERS, 268 U. S. 295, 69 L. ed. 963 (1925);

   A. L. A. SCHECHTER POULTRY CORP. v. UNITED STATES, 295 U. S. 495, 79 L. ed. 1570 (1935) at 547.

The petitioner respectfully submits that under the facts of the present case, respondents are clearly guilty of having violated the Sherman Act. It will be shown (1) that respondents' conspiracy *directly* affected and restrained commerce, and (2) that respondents *intended* to restrain commerce; either of which establishes a violation of the Sherman Act.

1. When Respondents Completely Stopped Petitioner's Manufacturing and Shipping Operations, Commerce Was Directly Affected and Restrained.

(A) The Stoppage of Operations of a Plant "In the Flow of Commerce" Directly Affects, Burdens and Restrains Commerce.

When respondents unlawfully seized and retained possession of the Apex plant, forcibly stopping its manufacturing operations and preventing its interstate shipment of finished merchandise, they directly affected, burdened and restrained interstate commerce. That such a stoppage has a direct and immediate effect upon commerce was unequivocally announced by this Court in National Labor Relations Board v. Jones & Laughlin Steel Corp., 301 U. S. 1, 81 L. ed. 893 (1937). In that case the stoppage of operations of a single factory "in the flow of commerce"—one which received its raw materials from and shipped its finished merchandise to points outside the state (as did petitioner)—was held by this Court to have a direct and immediate effect upon commerce (rather than an indirect and remote effect as found by the Circuit Court in the present case).

Said Mr. Chief Justice Hughes, speaking for this Court (page 41):

"Giving full weight to respondent's contention with respect to a break in the complete continuity of the 'stream of commerce' by reason of respondent's manufacturing operations, *the fact remains that the stoppage of those operations by industrial strife would have a most serious effect upon interstate commerce. In view of respondent's far flung activities, it is idle to say that the effect would be indirect or remote. It is obvious that it would be immediate and might be catastrophic.*" (Italics ours.)

The same principles and reasoning were held by this Court to apply in the companion case of NATIONAL LABOR RELATIONS BOARD v. FRIEDMAN-HARRY MARKS CLOTHING Co., 301 U. S. 58, 81 L. ed. 921 (1937) notwithstanding respondent's vigorous contention that the stoppage of its manufacturing and shipping operations could not be deemed to affect commerce directly because of the small size of its plant and volume of business (much smaller than that of Apex).

Thus, both Congress, in enacting the National Labor Relations Act, and this Court, in sustaining it, have recognized that under our existing economic structure the stoppage of manufacturing and shipping operations in a single plant "in the flow of commerce" directly burdens and restrains commerce.

The Circuit Court, however, concluded that the effect of the stoppage of petitioner's operations was indirect and remote and refused to follow the ruling of this Court in the JONES & LAUGHLIN and FRIEDMAN-HARRY MARKS Cases that the effect was direct, on the sole ground that the word "affect" as used in the National Labor Relations Act is broader in scope than the word "restraint" as used in the Sherman Act, saying (R. 1416):

> "Congress used a very broad word, 'affect', in the National Labor Relations Act, thus evidencing its intention to embrace the entire field of interstate commerce confided to it by the Constitution. Upon the other hand in the Sherman Act, Congress employed the word 'restraint,' which has a different and plainly more restricted connotation."

But the decisions of this Court in the JONES & LAUGHLIN and FRIEDMAN-HARRY MARKS Cases did not turn upon nor even involve the scope of the word "affect" in the National Labor Relations Act. In those cases, this Court found, as had Congress in the preamble to the National Labor Relations Act, that industrial strife caused by unfair labor practices in a manufacturing plant results in the stoppage of its operations. The issue then was *whether this stoppage of operations had a direct effect upon commerce*, for unless the effect was direct, Congress would not have the power to prohibit local practices resulting in such a stoppage. When this Court decided that issue by holding that such a stoppage did have a direct effect upon commerce, it announced a legal principle in no way confined to nor dependent on the use of the word "affect" in the National Labor Relations Act, but one which was equally applicable to the present case or to any case where that is the issue to be decided.

Respondents, however, make the further contention that the decision in the JONES & LAUGHLIN and FRIEDMAN-HARRY MARKS Cases is wholly inapplicable in deciding the present case because the question presented in this case is different. The question in those cases, it is argued, was the constitutionality of the National Labor Relations Act, whereas the question in the present case is the applicability of the Sherman Act. While the ultimate question for deci-

sion in each case is different, the issue upon which the answer to that question depends is exactly the same, namely, whether the effect upon commerce of a stoppage of operations is direct or indirect. Indeed, in the JONES & LAUGHLIN Case itself, this Court pointed out that the power of Congress to pass the National Labor Relations Act was to be determined by the same test which this Court applies in determining whether there is a restraint of commerce in violation of the Sherman Act, namely, whether the conduct involved directly affects commerce. Said this Court (page 38):

> "The close and intimate effect which brings the subject within the reach of Federal power may be due to activities in relation to productive industry although the industry when separately viewed is local. This has been abundantly illustrated in the application of the Federal Anti-Trust Act."
>
> . . . . . .
>
> "Upon the same principle, the Anti-Trust Act has been applied to the conduct of employees engaged in production. Loewe v. Lawlor, 208 U. S. 274, 52 L. ed. 488, 28 S. Ct. 301, 13 Ann. Cas. 815; United Mine Workers v. Coronado Coal Co., 259 U. S. 344, 66 L. ed. 975, 42 S. Ct. 570, 27 A. L. R. 762, supra; Bedford Cut Stone Co. v. Journeymen Stone Cutters' Asso., 274 U. S. 37, 71 L. ed. 916, 47 S. Ct. 522, 54 A. L. R. 791."

Similarly in A. L. A. SCHECHTER POULTRY CORP. v. UNITED STATES, 295 U. S. 495, 79 L. ed. 1570 (1935), this Court said (at page 546):

> "In determining how far the Federal Government may go in controlling intrastate transactions upon the ground that they 'affect' interstate commerce, there is a necessary and well-established distinction between direct and indirect effects. The precise line can be drawn

only as individual cases arise, but the distinction is clear in principle.

. . . . . .

"The distinction between direct and indirect effects has been clearly recognized in the application of the Anti-Trust Act."

Therefore, the holding by this Court in the JONES & LAUGHLIN and FRIEDMAN-HARRY MARKS Cases that the stoppage of operations in a single plant has a direct effect upon commerce is conclusive of that same issue in the case at bar. A direct effect upon and restraint of commerce having been caused by the unlawful acts of respondents pursuant to their conspiracy, the Sherman Act was thereby violated.

(B) EVEN APART FROM THE JONES & LAUGHLIN CASE, WHEN RESPONDENTS PREVENTED APEX FROM SHIPPING ITS FINISHED MERCHANDISE INTERSTATE, THEY DIRECTLY RESTRAINED COMMERCE.

On May 6, 1937, when respondents seized the Apex mill, the company had on hand, ready to ship, 130,117 dozen pairs of hosiery (R. 518, 519), valued at over $800,000 (R. 150, 151), 80% of which was for shipment to customers located outside of Pennsylvania (R. 522). Even if it be said in the present case that the stoppage of petitioner's manufacturing operations had but an indirect effect on commerce (notwithstanding this Court's decision in the JONES & LAUGHLIN Case that such a stoppage has a direct effect), *nevertheless when respondents wrongfully prevented the interstate shipments of the finished merchandise Apex had on hand against orders, they thereby directly restrained interstate commerce,* for this Court has said:

"So far as he sells and ships, or contracts to sell and ship, the commodity to customers in another state,

he engages in interstate commerce . . . subject . . . to regulation only by the Federal Government."

CARTER v. CARTER COAL CO., 298 U. S. 238, 80 L. ed. 1160 (1936) at page 303.

Therefore, when in the present case respondents stopped petitioner's interstate shipment of $800,000 of hosiery contracted for, they stopped and restrained petitioner's interstate commerce. In UNITED LEATHER WORKERS' v. HERRERT, 265 U. S. 457, 68 L. ed. 1104 (1924), this Court held that the illegal activities of respondents did not violate the Sherman Act, only because there was no evidence (as there was in the case at bar) of interference with the interstate shipments of goods ready to ship. Said this Court (page 463):

"There was no evidence whatever to show that complainants were obstructed by the strike or the strikers in shipping to other states the products they had ready to ship, or in their receipt of materials from other states, needed to make their goods. While the bill averred that defendants had instituted a boycott against complainants, and were prosecuting the same *by illegal methods, there was no evidence whatever that any attempt was made . . . to interfere with their interstate shipments of goods ready to ship.*" (Italics ours.)

That the prevention of interstate shipments of goods ready to ship is a restraint of commerce and a direct violation of the Sherman Act was again recognized by this Court in BEDFORD CUT STONE COMPANY v. JOURNEYMEN STONE CUTTERS' ASSN., 274 U. S. 37, 71 L. ed. 916 (1927) at page 47:

"In the United Leather Workers International Union Case, it appeared that the strikes were leveled only against production, and that the strikers (p. 471) *did nothing which in any way directly interfered with*

the interstate transportation or sales of the complainants' product:' and the decision rests upon the ground that there was an entire absence of evidence or circumstances to show that the defendants in their conspiracy to coerce complainants, were directing their scheme against interstate commerce. (Italics ours.)

. . . . . .

"In the present case, since the strikes were directed against the use of the product in other states, *with the immediate purpose and necessary effect of restraining future sales and shipments in interstate commerce*, the determinative decisions to be applied are those pointed out in the United Leather Workers International Union Case, at p. 469 . . ." (Italics ours.)

In the BEDFORD Case (as in LOEWE v. LAWLOR, 208 U. S. 274, 52 L. ed. 488 (1908) and in DUPLEX v. DEERING, 254 U. S. 443, 65 L. ed. 349 (1921)), this Court held that the acts of defendants — a secondary boycott at the point of destination of plaintiff's product — directly restrained commerce in violation of the Sherman Act. In the case of a secondary boycott, there is no physical restraint of commerce itself, but merely the passive act of boycott which eventually results in commerce being reduced. How much greater and more direct was the restraint of commerce in the present case when the physical force and plant seizure deliberately resorted to by respondents, directly prevented petitioner's interstate shipments! Surely it cannot be said that the prevention of interstate shipments by the passive act of boycott at the point of destination directly affects and restrains commerce, while the active prevention of those shipments at their point of origin through the lawless use of physical force has but an indirect and remote effect upon that commerce. Commerce is equally restrained whether that restraint is exerted at the shipment's point of origin or its

point of destination. "It is not material or important whether the restraint operates upon this interstate commerce at the point of origin or at the point where it comes to rest." AEOLIAN CO. v. FISCHER, 40 F. (2d) 189 (1930), at page 193. See also LOCAL 167, etc., v. UNITED STATES, 291 U. S. 293, 78 L. ed. 804 (1934) at 297.

Therefore, even if the Circuit Court considered the JONES & LAUGHLIN Case inapplicable, it nevertheless erred in failing to apply the doctrine laid down by this Court in the other cases hereinbefore cited, that a conspiracy which by violence and coercion prevents interstate shipments of goods ready to ship directly restrains commerce in violation of the Sherman Act.

2. The Evidence Clearly Shows and the Jury Found That Respondents Intended to Restrain Commerce.

Even apart from the question of whether respondents' conspiracy directly affected and restrained commerce, it nevertheless violated the Sherman Act since it was consummated with the intent of restraining commerce.

(A) THE JURY FOUND AS A FACT THAT RESPONDENTS INTENDED TO RESTRAIN COMMERCE.

The jury found as a fact that respondents' conspiracy was carried out with the intent of restraining commerce. At the trial, Judge Kirkpatrick had charged on this point as follows (R. 1314);

> "It is necessary in a case under the Sherman Act to show or to prove that there was an intent, on the part of the defendants who are sued, to restrain interstate commerce . . . *if you find* that the defendants did the things which they are charged with doing, then, without further proof of their intent, you *may* find from those facts that the defendants did intend to restrain interstate commerce." (Italics ours.)

After reviewing the acts with which respondents were charged, the Court further said (R. 1315):

> *"That is evidence from which, under the ruling of the Circuit Court of Appeals, you may find—I am going to leave it to you to say—but you may find that there was a restraint, an intended restraint, of interstate commerce* on the part of the persons, whoever they were, who caused the plant to close down and stop production." (Italics ours)*

The evidence which fully supported the jury's finding of respondents' intent to restrain commerce was as follows:

(a) Respondents' planned conspiracy to seize and hold possession of petitioner's plant by means of a sit-down strike, was shown by a "pledge card" distributed by the respondent union prior to the "sit-down" strike in which the signer pledged himself to join the union and "to go on a sit-down strike" at the Apex mill "to bring about full recognition of our demands and the union" (R. 229).

(b) Respondents' deliberate, violent and forceful seizure of petitioner's plant; their exclusion of Apex officers and employees (R. 313, 410, 787); and the wreckage of its plant, machinery and equipment (R. 296, 414-457), all of which was done by respondents with the intention and pur-

*While respondents may contend otherwise, there can be no doubt that in charging the jury as set forth above, the trial Judge submitted to the jury the question whether respondents intended to restrain commerce. This is further demonstrated by the fact that in his opinion denying respondents' motions to set aside the judgment and for a new trial, Judge Kirkpatrick carefully pointed out that while he could have charged the jury that intent to restrain commerce was presumed as a matter of law, "I submitted the question of defendants' intent as well—a course of which the plaintiff might have some reason to complain, but not the defendants". (R. 1390).

pose of completely stopping petitioner's manufacturing and interstate shipping operations until their demands were met.

(c) The declarations of William Leader, president of respondent union, on the day the Apex plant was invaded and seized, that the Union would hold possession of the Apex plant until its demands for a closed shop were granted (R. 223).

(d) Respondents' supplying the sit-down strikers with cots and blankets (R. 227, 228), food (R. 359) and strike pay (R. 332) to enable them to remain in complete and exclusive possession of the Apex plant and thus prevent its manufacturing operations and interstate shipments until their demands were granted.

(e) The flat refusal by the union, when requested, to permit Apex to ship the $800,000 of ordered finished hosiery on hand to its customers throughout the country; the president of the Union saying in response to such requests (R. 620):

> "War is war, and we won't let you remove one dozen pair of hosiery against any order until you give us a closed shop agreement."

The very fact that respondents carried out their conspiracy through the medium of a sit-down strike and with the stated purpose of not surrendering possession of petitioner's plant until their demands were granted (R. 184) is complete proof of their intent to restrain commerce. Such a conspiracy, by its very nature, contemplated the complete throttling of petitioner's interstate commerce. How then can it be said, as did the Circuit Court (R. 1415), that the record in this case does not support the jury's finding that respondents intended to restrain interstate commerce. In

so holding, the Circuit Court clearly erred. The jury's finding was conclusive.

Proof of an intent to restrain commerce having been shown, it is immaterial whether respondents' conspiracy is said to have directly or indirectly restrained commerce—in either case there is a violation of the Sherman Act. In the so-called "SECOND CORONADO CASE" (CORONADO COAL CO. v. UNITED MINE WORKERS, 268 U. S. 295, 69 L. ed. 963 (1925)), this Court, at page 310 said:

> "The mere reduction in the supply of an article to be shipped in interstate commerce by the illegal or tortious prevention of its manufacture or production is ordinarily an indirect and remote obstruction to that commerce. *But when the intent of those unlawfully preventing the manufacture or production is shown to be to restrain or control the supply entering and moving in interstate commerce*, or the price of it in interstate markets, *their action is a direct violation of the Anti-trust Act.*" [Citing cases.] (Italics ours.)

(B) EVEN IN THE ABSENCE OF THE FINDING BY THE JURY, RESPONDENTS' INTENT TO RESTRAIN COMMERCE WILL BE PRESUMED AS A MATTER OF LAW.

This Court has frequently declared, in Sherman Act cases, that the conspirators are presumed to have intended the necessary consequences of their acts and cannot be heard to say the contrary.

In UNITED STATES v. PATTEN, 226 U. S. 525, 57 L. ed. 333 (1913), persons engaged in a conspiracy which was shown to have restrained commerce, were, in legal contemplation, charged with having intended that result. Said this Court (226 U. S. at 543):

> "And that there is no allegation of a specific intent to restrain such trade or commerce does not make

against this conclusion, for, as is shown by prior decisions of this court, *the conspirators must be held to have intended the necessary and direct consequences of their acts, and cannot be heard to say the contrary.* In other words, by purposely engaging in a conspiracy which necessarily and directly produces the result which the statute is designed to prevent, they are, in legal contemplation, chargeable with intending that result. Addyston Pipe & Steel Co. v. United States, 175 U. S. 211, 243, 44 L. ed. 136, 148, 20 Sup. Ct. Rep. 96; United States v. Reading Co., 226 U. S. 324, 370, ante 243, 33 Sup. Ct. Rep. 90." (Italics ours.)

Again, in the case of NATIONAL LABOR RELATIONS BOARD v. JONES & LAUGHLIN, supra, this Court held that an intent to restrain commerce will necessarily be inferred from proof of the direct effect of respondents' conduct upon commerce. Said this Court (page 40):

". . . when the 'intent of those unlawfully preventing the manufacture or production is shown to be to restrain or control the supply entering and moving in interstate commerce . . . their action is a direct violation of the Anti-Trust Act'. 268 U. S. p. 310. *And the existence of that intent may be a necessary inference from proof of the direct and substantial effect produced by the employees' conduct.* Industrial Asso. v. United States, 268 U. S. p. 81, 69 L. ed. 855, 45 S. Ct. 403." (Italics ours.)

So, in the present case, after unlawfully seizing and taking possession of the Apex plant, destroying its machinery and equipment, stopping its manufacturing and forcibly preventing its interstate shipments, thereby completely stopping and obstructing its interstate commerce, respondents cannot be heard to say that they did not intend to restrain commerce, which was the necessary consequence

of their unlawful acts, because their "purpose" was to secure a closed shop agreement. Such an intent will be presumed as a matter of law.

The Circuit Court in its opinion, however, completely disregarded the abundant proof of respondents' intent to restrain commerce, the jury's finding of that intent, and the legal presumption of that intent, as discussed heretofore, by concluding that the only "intent" of respondents' conspiracy was to obtain a closed shop. Said the Court (R. 1415):

> "The evidence in the case at bar supports but one conclusion, namely . . . that the intent and purpose of the appellants at the time of the formation of their conspiracy and thereafter was to unionize the Apex plant, not to restrain commerce or to affect prices within the industry."

But the "intent", in the sense of "purpose" or "ultimate object", of the labor union involved in every Sherman Act case heretofore decided by this Court has merely been to unionize the particular plant involved or to obtain some other union objective, rather than to restrain commerce. Nevertheless this Court has squarely held that such an ultimate object cannot justify a restraint of commerce in violation of the Sherman Act. In BEDFORD CUT STONE CO. v. JOURNEYMEN STONE CUTTERS' ASSN., 274 U. S. 37, 71 L. ed. 916 (1927) this Court, at page 47 said:

> "Respondents' chief contention is that 'their sole and only purpose . . . was to unionize the cutters and carvers of stone at the quarries'. And it may be conceded that this was the ultimate end in view.
>
> . . . . . .
>
> "A restraint of interstate commerce cannot be justified by the fact that the ultimate object of the par-

ticipants was to secure an ulterior benefit which they might have been at liberty to pursue by means not involving such restraint.'"

Again, in INDUSTRIAL ASSOCIATION OF SAN FRANCISCO v. UNITED STATES, 268 U. S. 64, 69 L. ed. 849 (1925) in commenting on what may have been the ultimate object of the conspiracy (in the present case to obtain a closed shop agreement) as contrasted with the restraint of commerce resulting from the conspirators' unlawful actions (in the present case completely preventing petitioner's manufacturing and interstate shipments), this Court said (268 U. S. at page 77):

"Interference with interstate trade was neither desired nor intended.

. . . . . .

"The thing aimed at and sought to be attained was not restraint of the interstate sale or shipment of commodities, but was a purely local matter; namely, regulation of building operations within a limited local area, so as to prevent their domination by the labor unions."

. . . . . .

"But it is not enough that the object of a combination or conspiracy be outside the purview of the act, *if the means adopted to effectuate it directly and unduly obstruct the free flow of interstate commerce.* The statute is not aimed alone at combinations and conspiracies which contemplate a restraint of interstate commerce, but includes those *which directly and unduly cause such restraint in fact.*" (Italics ours.)

To the same effect see DUPLEX PRINTING PRESS CO. v. DEERING, 254 U. S. 443, 65 L. ed. 349 (1921) at 468.

To summarize the discussion in the foregoing section of this heading "III. Respondents' Conspiracy Violated the Sherman Act":

1. Respondents' unlawful stoppage of all of petitioner's business operations directly burdened and obstructed interstate commerce in violation of the Sherman Act.

2. Especially was interstate commerce directly restrained in violation of the Sherman Act when respondents forcibly prevented petitioner from making interstate shipments of the finished merchandise on hand ready to ship.

3. Respondents' specific intent to restrain commerce having been fully proved to and found by the jury, their conspiracy violated the Sherman Act, even should the stoppage of petitioner's operations be said to have had but an indirect effect upon commerce.

4. Even if respondents' intent to restrain interstate commerce had not been proved, respondents cannot be heard to say the contrary, since they will be held to have intended the necessary consequences of their unlawful acts.

IV. THE CIRCUIT COURT ERRED IN HOLDING THAT THE SHERMAN ACT WAS NOT VIOLATED BECAUSE A LARGE PROPORTION OF THE NATIONAL VOLUME OF COMMERCE IN HOSIERY WAS NOT RESTRAINED. SUCH A TEST IS IN COMPLETE CONFLICT WITH THE DECISIONS OF THIS COURT AND OTHER CIRCUIT COURTS OF APPEALS.

Although the Circuit Court in its opinion (R. 1401, 1402) roundly denounced respondents' outrageous conspiracy, specifically charging them with violence, plant seizure, wanton destruction of property and machinery, stoppage of manufacturing operations and refusal to permit the company to remove its finished hosiery then ready for interstate shipment—with the conduct of a "sit-down strike in

its most aggravated and illegal form"—it nevertheless concluded that respondents' conspiracy did not violate the Sherman Act *because an unreasonably large proportion of the entire national volume of commerce in hosiery was not affected.* Said the Circuit Court (R. 1412):

> "Furthermore, although the appellee did a business in the manufacture and sale of full fashioned hosiery of approximately $5,000,000. a year, this was a small part of the total industry. In 1936, the annual national shipments of full fashioned hosiery were 37,400,782 dozen pairs. In 1937, the annual national shipments amounted to 39,678,494 dozen pairs. The record shows that during the last eight months of 1937, the appellee shipped 274,791 dozen pairs of stockings. Even if the appellee's output was quadrupled, it would amount to less than three percent of the total national output in the industry. The interruption of production incurred by the appellee through the acts of the appellants had small effect upon interstate commerce."

And again (R. 1416):

> "In other words, in order to come within the purview of the Sherman Act, and thus to confer jurisdiction upon the Federal courts commerce must not only be affected, but also must be restrained and restrained to an unreasonable degree."

In so holding, the Circuit Court purported to apply the so-called "rule of reason" laid down by this Court in the case of STANDARD OIL CO. v. UNITED STATES, 221 U. S. 1, 55 L. ed. 619 (1911). That the Circuit Court completely misconceived the meaning and application of this "rule of reason" is immediately obvious from an examination of the origin and purpose of that rule. The reason for its adoption was fully explained in the case of UNITED STATES v. AMERICAN TOBACCO COMPANY, 221 U. S. 106, 55 L. ed. 663

(1911), in which this Court pointed out that if every agreement, contract or business combination, which in any degree restrained commerce, were held to be a violation of the Sherman Act, legitimate business activity would be drastically curtailed and penalized. Hence a "rule of reason" was adopted. Said this court in the TOBACCO CASE (221 U. S. at 178):

> "In that case [referring to the Standard Oil Case], it was held, without departing from any previous decision of the court, that as the statute had not defined the words 'restraint of trade', it became necessary to construe those words,—a duty which could only be discharged by a resort to reason. . . . 'The act of Congress must have a reasonable construction, or else there would scarcely be an agreement or contract among business men that could not be said to have, indirectly or remotely, some bearing upon interstate commerce, and possibly to restrain it' [Quoting from the Joint Traffic Case, 171 U. S. at 568].

The rule has never been applied by this Court in any case involving the unlawful activities of a labor union. The reason is clear. In business combination cases, the activities engaged in are *lawful and proper* activities and only become violative of the Sherman Act when they unreasonably control or restrain commerce. Because they are otherwise lawful activities, the "rule of reason" furnishes a "yardstick" for determining when these lawful activities have reached a point where they result in an unlawful restraint of commerce.

Where, however, commerce is directly restrained by acts which in themselves are flagrantly *unlawful*, as in the case at bar, such a restraint can never be considered "reasonable" and therefore not in violation of the Sherman

Act, simply because the volume of commerce restrained is but a small proportion of the national volume. This is conclusively shown by the fact that this Court has held the Sherman Act violated by the *unlawful* activities of labor unions which have restrained but a very small proportion of the national volume of commerce in the commodity involved.

Thus, in the SECOND CORONADO COAL Case, 268 U. S. 295, 69 L. ed. 963 (1925), the respondent union in its brief (page 78) strongly urged that a restraint of the production in plaintiff's mines of 5000 tons of coal a day (compared to a national production of from 10,000,000 to 15,000,000 tons of coal per week) was too insignificant to constitute a restraint of commerce in violation of the Sherman Act. Nevertheless, this Court held that the Act had been violated, although there *plaintiff's production was but one-fifth to one-third of one percent of the national production of coal.*

Similarly, in LAWLOR v. LOEWE, 235 U. S. 522, 59 L. ed. 341 (1915) this Court permitted the recovery of damages under the Sherman Act, although the evidence disclosed that plaintiff employed only 230 persons and manufactured only $400,000 worth of hats annually—an insignificant portion of the total hat production of the country.

And again, in DUPLEX PRINTING PRESS CO. v. DEERING, 254 U. S. 443, 65 L. ed. 349 (1921) this Court held the Sherman Act was violated by the activities of the defendant labor union and in that case the plaintiff's production was less than 8 percent of the total production of printing presses in the country.

That the volume of commerce restrained is not controlling is fully shown by the recent opinion of this Court in NATIONAL LABOR RELATIONS BOARD v. FAINBLATT, 306 U. S.

601, 83 L. ed. 1014 (1939) in which Mr. Justice Stone, speaking for the Court, stated (page 606):

> "Nor do we think it important, as respondents seem to argue, that the volume of the commerce here involved, though substantial, was relatively small as compared with that in the cases arising under the National Labor Relations Act which have hitherto engaged our attention. The power of Congress to regulate interstate commerce is plenary and extends to all such commerce, be it great or small. Hanley v. Kansas City Southern Railway Co., 187 U. S. 617. The exercise of Congressional power *under the Sherman Act*, the Clayton Act, the Federal Trade Commission Act, or the National Motor Vehicle Theft Act, has never been thought to be constitutionally restricted *because in any particular case, the volume of the commerce affected may be small.*" (Italics ours.)

In addition to the foregoing decisions of this Court, Circuit Court decisions have also uniformly rejected the contention that an unreasonable quantity of commerce must be restrained by the conspirators' unlawful acts, in order that the Sherman Act be violated. In STEERS v. UNITED STATES, 192 Fed. 1 (1911), in which defendants had *restrained the shipment of only four hogsheads of tobacco*, this contention was squarely rejected by the Circuit Court of Appeals for the Sixth Circuit, when, in its opinion, it said (page 4):

> "The first ground of demurrer was that one shipment by one shipper to another state does not amount to that interstate trade, the restraint of which is forbidden. This argument is based upon . . . the supposed holding in the recent Standard Oil and Tobacco Cases, 221 U. S. 1, 106, 31 Sup. Ct. 502, 632, 55 L. ed. 619, 663, to the effect that, in order to be covered by

this statute, the restraint of trade must be of considerable quantity; that is, of unreasonable amount."

. . . . . .

"We do not find in the Standard Oil and Tobacco Cases any holding that a direct restraint of trade must affect an unreasonably great amount of commerce in order to be within the prohibition. As we read these opinions, the matter under consideration, from the standpoint of reason, was not the amount of merchandise or traffic affected by the restriction, but the character and extent of the restriction itself; and it was thought that, if such restriction reasonably pertained to lawful results, it was not of itself necessarily forbidden. *These opinions contain no justification for the idea that direct and absolute restraint, bearing no reasonable relation to lawful means of accomplishing lawful ends, can be permitted only because the volume of traffic affected is not very great.*" (Italics ours.)

And in answer to the same argument advanced against invoking the Sherman Act, where the defendant strikers, by force and intimidation, prevented the interstate shipment of *but a single shipment of a steel billet*, the Court, in O'Brien v. United States, 290 Fed. 185 (1923), held that:

". . . the existence of the offense is found not in the amount of commerce restrained, but in the direct and absolute character of the restraint."

And in Patterson v. United States, 222 Fed. 599 (1915), cert. den. 238 U. S. 635, 59 L. ed. 1499 (1915), the Court stated at page 619:

". . . it is immaterial what is the extent of the interstate trade or commerce conspired against. . . . There is no act of interstate trade or commerce so insignificant as not to be protected by it [the Sherman Act]."

Hence, it is clear that the Circuit Court erred in holding that because the volume of commerce restrained by respondents was small when compared with the national volume of commerce in hosiery, the restraint of commerce caused by the unlawful acts of the respondents did not violate the Sherman Act.

CONCLUSION.

On May 6, 1937, when 2,500 employees of the Apex Hosiery Company were enjoying rates of pay, hours of work and general working conditions equal to that in any other plant in the country, the respondent union determined that the Apex plant forthwith must become a closed union shop. The fact that *only 8 of the company's 2,500 employees were members of the respondent union on that date*, and that therefore neither the union nor Apex could enter into a closed shop agreement * in no way deterred the respondents. Knowing that the employees of the Apex plant had refused, almost to a man, to join their union, respondents realized that only by the illegally coercive means of a sit-down strike could their objective be attained.

Obviously, respondents knew that so long as the sit-downers held possession of petitioner's mill, 2,492 employees would be prevented from working; manufacturing and interstate shipments would be prevented; in a word, all of the interstate commerce in which Apex was engaged to

* Sections 8 (3) and 9 (a) of the National Labor Relations Act (Act of 1935, c. 372, Sec. 8 (3), 49 Stat. 452, 29 U. S. C. A. Sec. 158 (3); Sec. 9 (a), 49 Stat. 453, 29 U. S. C. A. Sec. 159 (a)) only permit a closed shop agreement *provided* the union represents a majority of the employees in the plant.

the extent of $5,000,000. per year would be stopped and petitioner would be forced to accede to their unlawful demands.

The arguments heretofore advanced by respondents to escape the liability imposed on them by the Sherman Act all stem from the single fact that the acts complained of were committed by a labor union. Respondents contend that unless labor unions are entirely exempted from the provisions of the Sherman Act, the rights of labor will be so circumscribed and impaired as to be illusory. But this contention is answered by the fact that Congress, in the Clayton Act, has granted labor immunity from the operation of the Sherman Act *so long as the means which it employs to attain its purposes are lawful and peaceful.* If now labor seeks immunity from the Sherman Act even when it resorts to violence and sabotage to accomplish its purposes, its appeal should be addressed to Congress, and not to this Court.

Petitioner respectfully submits that where, as in the present case, commerce has been burdened and restrained by a conspiracy, it is no less a violation of the Sherman Act because that restraint was caused by the conspiracy of a labor union which deemed itself above the law and committed the unlawful and reprehensible acts of violence, property seizure and destruction of which the respondents stand condemned. In the words of Mr. Chief Justice Hughes, in the FANSTEEL Case (page 253):

> "To justify such conduct because of the existence of a labor dispute or of an unfair labor practice would be to put a premium on resort to force instead of legal remedies and to subvert the principles of law and order which lie at the foundations of society."

Wherefore, it is respectfully submitted that the judgment of the Circuit Court of Appeals for the Third Circuit should be reversed, and the judgment originally entered by the District Court, in favor of the petitioner, reinstated.

Respectfully submitted,
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IN THE

Supreme Court of the United States

October Term, 1939.

No. 638.

APEX HOSIERY COMPANY, a Pennsylvania Corporation,
Petitioner,

v.

WILLIAM LEADER and AMERICAN FEDERATION OF FULL FASHIONED HOSIERY WORKERS, PHILADELPHIA, BRANCH NO. 1, LOCAL NO. 706,
Respondents.

Petitioner's Brief in Reply to Briefs of Respondents and Amici Curiae.

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INDEX.

Page

I. Congress Never Intended to Exclude All Labor Union Activities From the Scope of the Sherman Act 1

A. Intention of Congress in Passing the Sherman Act 1

B. Intention of Congress in Passing the Clayton Act 6

C. Intention of Congress in Subsequent Legislation Relied on as Exempting All Labor Union Activities From the Scope of the Sherman Act 8

II. Activities of Labor Unions Are Not Excluded From the Operation of the Sherman Act by Technical Use of the Expression "Restraint of Trade" 10

III. Appendix:

Excerpts From Brief of the United States in the Hutcheson Case 16

CASES CITED.

	Page
Aldridge v. Williams, 44 U. S. 3, How. 9-24, 11 L. ed. 469 (1845)	4, 5
American Net & Twine Co. v. Worthington, 141 U. S. 468, 35 L. ed. 821 (1891)	4
In re Debs, 158 U. S. 564, 39 L. ed. 1092 (1895)	3
Callan v. Wilson, 127 U. S. 540, 32 L. ed. 223 (1888)	12
Downes v. Bidwell, 182 U. S. 244, 45 L. ed. 1088 (1901)	4
District of Columbia v. Washington Market Co., 108 U. S. 243, 27 L. ed. 714 (1883)	4
Dunlap v. United States, 173 U. S. 65, 43 L. ed. 616 (1899)	4
Duplex Printing Press Co. v. Deering, 254 U. S. 443, 65 L. ed. 349 (1921)	4
Frankfurter and Greene, "The Labor Injunction," at pp. 142, 145	7
In re Grand Jury, 62 Fed. 834 (1894)	2
Lapina v. Williams, 232 U. S. 78, 58 L. ed. 515 (1914)	4
Loewe v. Lawlor, 208 U. S. 274, 52 L. ed. 488 (1908)	3
Maxwell v. Dow, 176 U. S. 581, 44 L. ed. 597 (1900)	4
Mitchell v. Great Works Milling & Mfg. Co., 2 Story 648, 653	5
Omaha & C. B. Street R. Co. v. Interstate Commerce Commission, 230 U. S. 324, 57 L. ed. 1501 (1913)	4
Reg. v. Hertford College, L. R. 3 Q. B. Div. 693, 707	5
Standard Oil Co. v. United States, 221 U. S. 1, 55 L. ed. 619 (1911)	4
State v. Stewart, 59 Vt. 273, 9 Atl. 559 (1887)	12
Thomas v. Cincinnati Railway, 62 Fed. 803 (1894)	2
United States v. Borden Company, 308 U. S. , 84 L. ed. 143	8

CASES CITED—Continued.

	Page
U. S. v. Cassidy et al., 67 Fed. 698 (1895)	2
U. S. v. Agler, 62 Fed. 824 (1894)	2
U. S. v. Debs, 63 Fed. 436 (1894)	2
U. S. v. Debs, 64 Fed. 724 (1894)	2
U. S. v. Elliott, 62 Fed. 801 (1894)	2
U. S. v. Elliott, 64 Fed. 27 (1894)	2
United States v. St. Paul, M. & M. R. Co., 247 U. S. 310, L.ed. 1130 (1918)	4
United States v. Trans-Missouri Freight Asso., 166 U. S. 290, 41 L. ed. 1007 (1897)	4
United States v. Union P. R. Co., 91 U. S. 72, 23 L. ed. 224 (1875)	4, 5
U. S. v. Workingmen's Amalgamated Council et al., 54 Fed. 994; aff'd. 57 Fed. 85 (1893)	2
Waterhouse v. Comer, 55 Fed. 149 (1893)	2

IN THE

Supreme Court of the United States.

No. 638. October Term, 1939.

APEX HOSIERY COMPANY, a PENNSYLVANIA CORPORATION,

Petitioner,

v.

WILLIAM LEADER AND AMERICAN FEDERATION OF FULL FASHIONED HOSIERY WORKERS, PHILADELPHIA BRANCH NO. 1, LOCAL NO. 706,

Respondents.

PETITIONER'S BRIEF IN REPLY TO BRIEFS OF RESPONDENTS AND AMICI CURIÆ.

The interval of time between the receipt of briefs from respondents and the *amici curiæ* and the date of the argument is so short that this brief can merely outline the reply to the most important of the issues raised in those briefs.

I. Congress Never Intended to Exclude All Labor Union Activities From the Scope of the Sherman Act.

A. INTENTION OF CONGRESS IN PASSING THE SHERMAN ACT.

The respondents and at least two of the *amici curiæ* contend that in the enactment of the Sherman Act Congress did not intend that any activities of labor unions should come within its scope and that this Court should now

so hold. No such contention was made by respondents in the courts below. To this contention there are a number of answers:

1. An examination of the legislative history of the Act not only fails to reveal that it was the intention of Congress to exclude all activities of labor unions from the operation of the Sherman Act, but leads inescapably to the conclusion that Congress *did* intend that the Sherman Act should apply to *unlawful* activities of labor unions by which commerce was restrained. A thorough analysis of this legislative history has been made in a brief recently filed by Mr. Thurman Arnold, Assistant Attorney General, and special assistants to the Attorney General in U. S. v. HUTCHESON ET AL., in the District Court of the United States for the Eastern District of Missouri, Eastern Division, September Term, 1939, No. 21231. Pertinent sections of that brief upon this legislative history are printed in full in the Appendix to this reply brief.

2. Immediately following the passage of the Sherman Act, there was a host of lower court cases in which the Act was turned against labor and its activities.[1] As a result of the Pullman Strike of 1894, the use of injunctions under the Sherman Act against labor in various cases received widespread publicity. One of these cases reached this

[1] U. S. v. WORKINGMEN'S AMALGAMATED COUNCIL, 54 Fed. 994, *aff'd.*, 57 Fed. 85 (1893); WATERHOUSE v. COMER, 55 Fed. 149 (1893); U. S. v. ELLIOTT, 62 Fed. 801 (1894); U. S. v. ELLIOTT, 64 Fed. 27 (1894); U. S. v. AGLER, 62 Fed. 824 (1894); U. S. v. DEBS, 64 Fed. 724 (1894); THOMAS v. CINCINNATI RAILWAY, 62 Fed. 803 (1894); IN RE CHARGE TO GRAND JURY, 62 Fed. 828 (1894); U. S. v. DEBS, 63 Fed. 436 (1894); IN RE GRAND JURY, 62 Fed. 834 (1894); U. S. v. CASSIDY, 67 Fed. 698 (1895).

Court. In re Debs, 158 U. S. 564, 39 L. ed. 1092 (1895). If in 1890 Congress had really intended to exclude labor unions from the operation of the Act, and immediately thereafter it saw the Act misapplied in the cases above cited, Congress would have been spurred into action. It certainly had ample opportunity to correct this so-called "misapplication" of the Act, when between 1890 and 1902 eleven bills were introduced into Congress which provided, among other things, for the exemption of labor from the provisions of the Sherman Act.[2] The sole purpose of one of these bills was to amend the Act so as to exempt labor organizations. This bill died in Committee.[3] The very failure of the above mentioned bills to become law is clear indication of Congressional intent *not to exclude labor unions* from the operation of the Sherman Act.

3. This Court, without a dissent, has consistently held that it was the intention of Congress to include restraints of trade caused by the unlawful activities of labor unions within the scope of the Sherman Act. Loewe v. Lawlor, 208 U. S. 274, 52 L. ed. 488 (1908). Despite repeated attempts to persuade this Court to reverse itself upon this point it has adhered to the rule of Loewe v. Lawlor without deviation. See cases cited on page 14 of petitioner's original brief.

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[2] H. R., 6640, in the 52nd Congress; H. R., 10539, in the 55th Congress; H. R., 11667 in the 56th Congress; S., 649 and H. R., 14947, in the 57th Congress; S., 1728, H. R., 89, H. R. 116, and H. R. 2636, in the 52nd Congress; H. R., 7938 in the 55th Congress; and H. R., 11988 in the 57th Congress.

[3] S., 1546, *Bills and Debates Relating to Trusts*. Senate Document No. 147, 57th Congress, 2nd Session 1902-1903, page 557. Copies of the bills here mentioned in the order of their introduction may be found in *Bills and Debates Relating to Trusts*, Senate Document No. 147, 57th Congress, 2nd Session, 1902-1903, pp. 465 and 411, 469 and 449, 473 and 431, 477 and 417, 481, 581, 949, 953, 987 and 999.

4. The contention that Congress did not intend to include labor unions within the operation of the Sherman Act at the time of its passage is based principally upon legislative debates preceding the passage of the Act. Such reliance totally disregards the repeated decisions of this Court that legislative debates may *not* be resorted to as a means of determining congressional intent, even if the language of the statute in question be ambiguous. ALDRIDGE v. WILLIAMS, 3 How. 9, 11 L. ed. 469 (1845); UNITED STATES v. UNION P. R. Co., 91 U. S. 72, 23 L. ed. 224 (1875); DISTRICT OF COLUMBIA v. WASHINGTON MARKET Co., 108 U. S. 243, 27 L. ed. 714 (1883); AMERICAN NET & TWINE Co. v. WORTHINGTON, 141 U. S. 468, 35 L. ed. 821 (1891); UNITED STATES v. TRANS-MISSOURI FREIGHT ASSO., 166 U. S. 290, 41 L. ed. 1007 (1897); DUNLAP v. UNITED STATES, 173 U. S. 65, 43 L. ed. 616 (1899); MAXWELL v. DOW, 176 U. S. 581, 44 L. ed. 597 (1900); DOWNES v. BIDWELL, 182 U. S. 244, 45 L. ed. 1088 (1901); STANDARD OIL Co. v. UNITED STATES, 221 U. S. 1, 55 L. ed. 619 (1911); OMAHA & C. B. STREET R. Co. v. INTERSTATE COMMERCE COMMISSION, 230 U. S. 324, 57 L. ed. 1501 (1913); LAPINA v. WILLIAMS, 232 U. S. 78, 58 L. ed. 515 (1914); UNITED STATES v. ST. PAUL, M. & M. R. Co., 247 U. S. 310, 62 L. ed. 1130 (1918); DUPLEX PRINTING PRESS Co. v. DEERING, 254 U. S. 443, 65 L. ed. 349 (1921).

The reasons for this rule were clearly pointed out in the case of UNITED STATES v. TRANS-MISSOURI FREIGHT ASSN., 166 U. S. 290, 41 L. ed. 1007 (1897), wherein this Court, at page 318, stated:

> "Looking simply at the history of the bill from the time it was introduced in the Senate until it was finally passed, it would be impossible to say what were the views of a majority of the members of each House in relation to the meaning of the act. It cannot be said

that a majority of both Houses did not agree with Senator Hoar in his views as to the construction to be given to the act as it passed the Senate. *All that can be determined from the debates and reports is that various members had various views, and we are left to determine the meaning of this act as we determine the meaning of other acts from the language used therein.*

There is, too, a general acquiescence in the doctrine that *debates in Congress are not appropriate sources of information from which to discover the meaning of the language of a statute passed by that body.* UNITED STATES v. UNION P. R. Co., 91 U. S. 72, 79; ALDRIDGE v. WILLIAMS, 44 U. S. 3, How. 9-24, Taney, Ch. J.; MITCHELL v. GREAT WORKS MILLING & MFG. Co., 2 Story, 648, 653; REG. v. HERTFORD COLLEGE, L. R. 3 Q. B. Div. 693, 707.

The reason is that it is impossible to determine with certainty what construction was put upon an act by the members of a legislative body that passed it by resorting to the speeches of individual members thereof. Those who did not speak may not have agreed with those who did; and those who spoke might differ from each other; the result being that the only proper way to construe a legislative act is from the language used in the act, and, upon occasion, by a resort to the history of the times when it was passed." (Italics ours.) [1]

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[1] The complete misconception of the law on this question under which respondents and the *amici* labor will be realized by examination of the brief on behalf of the National Lawyers Guild, at page 23, wherein it is stated:

> "It is a well-settled canon of interpretation that legislative debates are not controlling in the interpretation of statutes but may be resorted to in case of doubt. Bearing that in mind, it is permissible to resort to the intention of Congress with respect to the Act generally, in order to ascertain whether Congress intended to enact the common law into a federal statute or to enact something different from the common law."

5. The actual intent of Congress in enacting the Sherman Act, with respect to its applicability to the activities of labor unions, has become a completely academic question. After this Court had held in LOEWE v. LAWLOR, *supra*, that labor unions engaging in conspiracies in restraint of trade were within the prohibition of that law, Congress in 1914, in the enactment of the Clayton Act, approved and accepted this construction of the Sherman Act by granting immunity from the Sherman Act only to certain peaceful and lawful activities of labor unions. We refer to Sections 6 and 20 of the Clayton Act, which are cited and quoted in full at pp. ' and 10 of petitioner's main brief. Whatever may have bee intent of Congress in passing the Sherman Act, it is clear that in passing the amendatory Clayton Act, Congress intended that the Sherman Act should continue to apply to labor unions when they engaged in those activities in restraint of trade, to which immunity from the Sherman Act was not extended by the Clayton Act.

B. INTENT OF CONGRESS IN PASSING THE CLAYTON ACT.

The respondents and the *amici curiæ* argue at length that the Clayton Act afforded a blanket exemption of all labor union activities from the operation of the Sherman Act. As pointed out above, the language of Sections 6 and 20 of the Clayton Act (printed at length on pp. 9 and 10 of petitioner's main brief) demonstrates the exact contrary.

This attempt to distort what is clearly a limited exemption of certain specific lawful labor activities into a complete exemption of all labor activities, by reference to the congressional debates and the legislative history of the Clayton Act has likewise been fully treated in the brief filed

by Assistant Attorney General Arnold, from which appo-site sections are printed in the appendix to this reply brief. (On this point see pp. 32 *et seq., infra.*)

The conclusions to be drawn from the congressional debates on the Clayton Act and its legislative history are succinctly stated in FRANKFURTER AND GREENE, "THE LABOR INJUNCTION," at pp. 142, 145:

> "This measure brought labor, so it was thought, into the promised land. 'Those words, the labor of a human being is not a commodity or article of commerce', Samuel Gompers informed the trade union movement, 'are sledge hammer blows to the wrongs and injustices so long inflicted upon the workers. This declaration is the industrial magna charta upon which the working people will rear their construction of industrial freedom.' And descending to particulars, Mr. Gompers added, 'This declaration removes all possibility of interpreting trust legislation to apply to organizations of the workers, and their legitimate associated activities.' Whether this expectation coincided with Congressional intent is meat for endless dialectic. The debates in Congress looked both ways.
>
> . . . . . .
>
> "This brief history illustrates how fictitious can become the search by courts for 'the intent of legislature' in construing ambiguous enactments. With a legislative history like that which surrounds the Clayton Act, talk about the legislative intent as a means of construing legislation is simply repeating an empty formula. . . . The long-drawn-out battle on the national stage, to withdraw labor tactics from the risks of judicial notions concerning 'restraint of trade', was fought and lost."

The unequivocal language of the Clayton Act granting o labor unions only a limited exemption from the operation f the Sherman Act is not susceptible of the interpretation

sought to be placed upon it by respondent and *amici curiæ*, by resort to the equivocal evidence of congressional intent.

C. Intention of Congress in Subsequent Legislation Relied On as Exempting All Labor Union Activities From the Scope of the Sherman Act.

The respondents and the *amici curiæ* argue that even if the unlawful activities of labor unions, by which commerce is restrained, were within the scope of the Sherman Act and were not excluded therefrom by the Clayton Act, nevertheless Congress by subsequent legislation has granted complete exemption of all labor union activities from the scope of the Sherman Act. The Statutes thus relied on are: Norris-LaGuardia Act, Railway Labor Act, National Labor Relations Act, Public Contracts Act, Fair Labor Standards Act and the Anti-Racketeering Act.

If Congress had intended by any or all of these Acts to exempt the activities of labor unions from the operation of the Sherman Act, even when resort was had to violence and lawlessness, Congress could and would have said so in unmistakable terms. Congress certainly did not intend to repeal the Sherman Act by implication.

This contention has been so recently rejected by this Court that extended discussion is unnecessary. On December 4, 1939, in the case of United States v. Borden Company, 308 U. S. 188, 84 L. ed. 143, Mr. Chief Justice Hughes, speaking for a unanimous court, reversed the decision of the lower court which held that subsequent legislation had rendered inapplicable the prohibitions of the Sherman Act to a conspiracy participated in by milk distributors, a cooperative association of milk producers, and

a labor union engaged in distributing milk and others, stating (84 L. ed. at 149):

"It is a cardinal principle of construction that repeals by implication are not favored. When there are two acts upon the same subject, the rule is to give effect to both if possible. United States v. Tynen, 11 Wall. 88, 92, 20 L. ed. 153, 154; Henderson's Tobacco, 11 Wall. 652, 657, 20 L. ed. 235, 237; General Motors Acceptance Corp. v. United States, 286 U. S. 49, 61, 62, 76 L. ed. 971, 977, 978, 52 S. Ct. 468, 82 A. L. R. 600. The intention of the legislature to repeal 'must be clear and manifest.' Red Rock v. Henry, 106 U. S. 596, 601, 602, 27 L. ed. 251, 253, 1 S. Ct. 434. It is not sufficient, as was said by Mr. Justice Story in Wood v. United States, 16 Pet. 342, 362, 363, 10 L. ed. 987, 995, 'to establish that subsequent laws cover some or even all of the cases provided for by [the prior act]; for they may be merely affirmative, or cumulative, or auxiliary'. There must be a 'positive repugnancy between the provisions of the new law, and those of the old; and even then the old law is repealed by implication only pro tanto to the extent of the repugnancy.' See also Posadas v. National City Bank, 296 U. S. 497, 504, 80 L. ed. 351, 355, 56 S. Ct. 349.

"The Sherman Act is a broad enactment prohibiting unreasonable restraints upon interstate commerce, and monopolization or attempts to monopolize, with penal sanctions. The Agricultural Act is a limited statute with specific reference to particular transactions which may be regulated by official action in a prescribed manner.

. . . . . .

"These explicit provisions requiring official participation and authorizations show beyond question how far Congress intended that the Agricultural Act should

operate to render the Sherman Act inapplicable. *If Congress had desired to grant any further immunity, Congress doubtless would have said so.*" (Italics ours.)

II. The Expression in the Sherman Act "Conspiracies in Restraint of Trade", Is Not a Word of Art Which Excludes the Activities of Labor Unions From Its Prohibitions.

It is argued by respondents that at common law, labor unions were not considered illegal conspiracies in restraint of trade and that when Congress, in the Sherman Act, used the words "conspiracy in restraint of trade", it used words of art which showed an intention to exclude labor unions from the operation of the Act—that at common law the expression "conspiracy in restraint of trade" was never applied to labor unions. (This argument is now made by respondents for the first time in the long history of this case.)

In making this contention, respondents completely disregard a host of English and American authorities, which, prior to the Sherman Act, held that where laborers combined and interfered with the business operations of the employer, they were guilty of conspiracy in restraint of trade. The common law concept of conspiracy in restraint of trade comprehended the activities of labor.

Dr. Alpheus T. Mason, in his book "Organized Labor and the Law"[1], conclusively demonstrates that because the expression "conspiracy in restraint of trade" had been applied at common law to the activities of labor unions, Congress, when it used that expression in the Sherman Act

[1] Duke University Press, 1925.

necessarily meant to include the activities of labor within the scope of the Act. His thesis is amply documented with English and American cases [2] and commentators.[3] Says Mason (page 21):

> "The first and most important doctrine which the English courts invoked against labor was the doctrine of criminal conspiracy. Later, the courts found another check, not entirely distinct from the doctrine of conspiracy, that could be imposed on the operations of labor combinations. *This was the common-law rule holding as unlawful all contracts or combinations in restraint of trade.* In England, these two doctrines profoundly affected the activities of organized labor." (Italics ours.)

Again, at page 139, Mason says:

> "The term restraint of trade, however, covered agreements other than those just referred to. That term, as Sir William Erle says, 'is of very wide extension' and embraces not only agreements among producers and manufacturers to control the market and set the price of products, *but also the activities of labor combinations,* such as boycotting, strikes, and picketing. It should be observed, however, that even here if the purposes of the labor union are successfully prosecuted, the effect is to remove, temporarily at least, the offensive employer from the field of competition, and thus one may say that competition is in a measure suppressed. Even so, agreements among laborers to strike, picket or boycott were rarely referred to at common law as restraining competition. *Rather they were objected to as in restraint of trade, and were held to be actionable or indictable as such.*" (Italics ours.)

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[2] See cases, Footnote 8, page 136 of MASON.

[3] See MASON, pages 44 *et seq.*, and footnotes. For a complete development of this subject see MASON chaps. I to III inclusive.

Three years before the passage of the Sherman Act, in the case of STATE v. STEWART, 59 Vt. 273, 9 Atl. 559 (1887) (not cited by the respondents) the Court held that the activities of a labor union constituted a conspiracy to restrain trade.

In the STEWART Case, the respondents were charged under the common law with the offense of conspiracy by violence and intimidation to prevent a granite company from employing certain granite cutters, to deter certain laborers from working for the company and to compel the granite works to conform to the rules of the National Stonecutters Union. Said the Court at page 284:

> "The respondents' counsel argue that the first and second counts do not cover the offense of criminal conspiracy at common law. But we think, upon a careful examination of the English and American cases cited in argument,—and we suspect that none have been overlooked on either side,—*that it is clear to a demonstration that a combination of the character set forth in these counts was a conspiracy at the common law;* and further, that the subject-matter of the offense being the same in this country as in England, namely, an interference with the property rights of third persons, and a *restraint* upon the lawful prosecution of their industries, as well as an unlawful control over the free use and employment by workmen of their own personal skill and labor, at such times, for such prices, and for such persons as they please, the common law of England is 'applicable to our local situation and circumstances' in this behalf, and therefore the common law of Vermont." (Italics ours.)

See also CALLAN v. WILSON, 127 U. S. 540, 32 L. ed. 223 (1888).

Here then, is a clear statement of the common law of both England and the United States immediately prior to the passage of the Sherman Act.

Wherefore, it is respectfully submitted that neither the common law nor the Congressional debates or legislative history indicate that Congress intended to exclude the unlawful activities of labor unions from the Sherman Act.

Respectfully submitted,

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APPENDIX.

The following pages contain a portion of the Brief for the United States filed in UNITED STATES v. HUTCHESON in The District Court of the United States for the Eastern District of Missouri, Eastern Division, September Term, 1939, No. 21231 by Mr. Thurman Arnold, Assistant Attorney General, whose exhaustive researches on the quoted subjects are set forth in his text, and whose conclusions, stated with clarity and precision, render any attempt to restate them a work of supererogation.

BRIEF OF UNITED STATES IN HUTCHESON CASE.

(*Pages 58 to 97 inclusive.*)

III.

The Acts of Defendants Are Not Privileged or Otherwise Exempted From the Application of Section 1 of the Sherman Act by Any Provision of Either the Sherman Act or the Clayton Act.

The proposition stated in the point heading just above has again and again been affirmatively decided by the Supreme Court. See *Loewe* v. *Lawlor*, 208 U. S. 274; *Lawlor* v. *Loewe*, 235 U. S. 522; *Duplex Co.* v. *Deering*, 254 U. S. 443; *United States* v. *Brims*, 272 U. S. 549; *Bedford Cut Stone Co.* v. *Stone Cutters' Assn.*, 274 U. S. 37; *Local 167* v. *United States*, 291 U. S. 293. The defendants apparently recognize that these are *ad hoc* decisions adverse to their position. Their only recourse is to ask this Court to overrule this long line of cases, and to refuse to abide by the rules there laid down by the Supreme Court. Without stopping to question the propriety of a lower court overruling decisions of the Supreme Court of the United States

(cf. *United States ex rel. Perkins* v. *Guest*, 17 F. Supp. 177, at 180) we pass to a consideration of this question on the merits. We shall here review the background against which the Sherman Act was drawn, the legislative history of the Sherman Act, its interpretation by the Supreme Court in *Loewe* v. *Lawlor, supra*, the legislative history of the Clayton Act, and its interpretation by the Supreme Court in *Duplex Co.* v. *Deering, supra, Bedford Cut Stone Co.* v. *Stone Cutters' Assn., supra, Local 167* v. *United States, supra.*

Legislative History of the Sherman Act. The defendants' entire argument in support of their asserted exemption relies upon certain conclusions drawn from the legislative history of the antitrust laws. That legislative history does not support the broad exemption claimed, despite the argument contained in the article "The Sherman Act And Labor Disputes" by Louis G. Boudin in 39 Columbia Law Review 1283 and 40 Columbia Law Review 14. In form a law review article, Mr. Boudin's article is actually merely another brief on behalf of claimed labor exemption under the Sherman Act submitted by the man who has appeared as counsel for labor leaders in *Leader* v. *Apex Hosiery Co., supra*, and *International Brotherhood of Teamsters, etc.* v. *International Union of Brewery, etc., Workers, supra*, and other recent cases. We think that Mr. Boudin's argument is largely academic and answers itself. A detailed refutation of that argument is beyond the scope of this brief, since it would extend its length to truly unwieldy proportions upon questions which are purely collateral to those in issue here. However, it is to be noted in reading Mr. Boudin's article that at every step in his argument the premises upon which he builds are founded upon inferences drawn from

conflicting facts, inferences which are not only not inescapable ones, but which often seem to be most implausible. For the Court's information we desire to point out that this same question of the applicability of the Sherman Act to labor organization is also treated in Mr. Jaffe's article, *supra*, and in a Note (1940) 49 Yale Law Journal 518. Without referring again to these articles we shall here sketch briefly the legislative history of the Sherman Act.

The Sherman Act must be read against the background of the 19th century labor law. The antitrust law was designed primarily to strike at the evils brought about by combinations of business organizations, that is, trusts and monopolies. Since that proposition is undisputed there is no need to review here the familiar story of the growth of monopolies in the late 19th century. Instead, we turn directly to the consideration of the labor problems confronting the country at the time of the passage of the Sherman Act.

The period from 1860 to 1890 witnessed the birth and growth of national labor organizations and a consequent increase in activities directed toward the betterment of labor conditions. The period from 1873 to 1880 was one of general depression and unemployment and was marked by a large number of strikes, many of which were accompanied by violence and crime. By 1880, the Knights of Labor, the first national labor union, had achieved widespread prominence while engendering coincident distrust and disfavor because of its secret character. This organization was split broadly into two factions, one favoring reform through political channels and the other advocating direct action. The latter group proved the stronger and in the early eighties embarked the organization upon a series of strikes in an aggressive campaign to raise the standard of living.

However, the frequency of the strikes and the violent measures which were usually adopted soon alienated public sympathy, and by 1887 the Knights were in wide public disfavor. In the meantime the American Federation of Labor had been formed and was fast growing, but as a result of the ill-advised activities of the Knights of Labor, the Federation was, until 1898 at least, regarded by the public with some suspicion.

Nor were the courts idle during this period. The doctrine of criminal conspiracy had long been applied to combinations of laborers and several successful prosecutions took place under this doctrine as late as the decade of the eighties. The law reports of that period contain a number of examples of prosecutions or injunctions against labor organizations as "conspiracies" on the ground that they restricted the play of free enterprise. See, for example, *Callan* v. *Wilson*, 127 U. S. 540; *State* v. *Stewart*, 59 Vt. 273, 9 Atl. 559. As the use of the criminal weapon declined the resort to the injunctive remedy grew apace. The injunction was first utilized against labor organizations during the great railway strike of 1877 and between that date and 1890 it was resorted to upon numerous occasions in both state and federal courts. See Landis, *Cases On Labor Law*, Introduction, p. 34 *et seq.*

Against this background on August 14, 1888, Senator Sherman introduced S. 3445, a bill "to declare unlawful trusts and combinations in restraint of trade and production." The first section of this bill read, in part, as follows:

> That all arrangements, contracts, agreements, trusts or combinations • • • made with a view or which tend to prevent full and free competition • • • are hereby declared to be against public policy, unlawful and void;

In discussion of this section of the bill in the Committee of the Whole, Senator George declared that it would be applicable to labor organizations. No vote on this bill was ever had in the Senate.

On December 4, 1889, Senator George introduced a bill (S. 6) in relation to trusts, section 4 of which contained a provision exempting the activities of labor organizations made with a view to lessening hours or increasing wages. During the Fifty-first Congress (1890) a number of bills relating to trusts containing identical provisions were introduced but were never acted upon. H.R. 91, H.R. 402, H.R. 509, H.R. 826, H.R. 3819, H.R. 3844.

On December 4, 1889, Senator Sherman introduced S. 1, "A bill to declare unlawful trusts and combinations in restraint of trade and production." The bill was referred to the Finance Committee. On January 14, 1890, the bill was reported out from the Finance Committee to the Committee of the Whole. As introduced by Senator Sherman and reported from the Finance Committee, section 1 of the bill read in part as follows:

> That all arrangements, contracts, agreements, trusts or combinations * * * made with a view, or which tend, to prevent full and free competition * * * and * * * designed, or which tend, to advance the cost to the consumer * * * are hereby declared to be against public policy, unlawful and void;

The bill contained no provision exempting labor organizations from its terms and provisions.

There followed several extended discussions with reference to the application of the bill to labor organizations. Senators Hiscock, George, Teller, Stewart, and Hoar, were of the opinion that the bill would interfere with the organizations of laborers and farmers.

Senator Sherman spoke against this view but was unable to convince several of the Senators that the bill would not be applicable to labor organizations. For example, on March 25, 1890, Senator Stewart said:

> Again, suppose that the employers, railroad companies, and manufacturing establishments should say that labor shall be put down to two bits a day. Suppose that capital should combine against labor, as it is very much inclined to do, and there should be a combination among the laborers which would increase the cost of production and increase the cost of all articles consumed. Suppose there should be a combination among the laborers to protect themselves from grasping monopolies; they would all be criminals for doing it. (See Bills and Debates in Congress, pp. 192-194.)

Consequently, Senator Sherman introduced a proviso to Section 1 of the bill. The proviso was taken from an amendment proposed by Senator George and read as follows:

> *Provided*, That this act shall not be construed to apply to any arrangements, agreements, or combinations between laborers made with the view of lessening the number of hours of labor or of increasing their wages; nor to any arrangements, agreements, or combinations among persons engaged in horticulture or agriculture made with the view of enhancing the price of agricultural or horticultural products.

In offering this proviso Senator Sherman said: "I do not think it necessary, but, at the same time to avoid any confusion, I submit it to come in at the end of the first section." The proviso was adopted as an amendment.

On March 27, 1890, Senator Edmunds spoke in vigorous opposition to the proviso which had been appended to section 1 of the bill. Senator Edmunds' view was that it

was economically impractical to permit combinations on one economic plane while prohibiting them on another. (Bills and Debates in Congress, p. 289 *et seq.*).

Senator Hoar expressed an opposing view to which Senator Edmunds joined vigorous debate. Senator Edmunds spoke, in part, as follows:

> The laborer can not earn wages by looking at the sky, as beautiful as it is; he can not earn wages by looking at the sea, as deep as it is. He must earn wages by finding somebody who can afford—unless he breaks and they both go to the bottom—to pay him the price he demands for his day's work. That somebody is a corporation, as the Senator says, as one illustration. That corporation is only an association of persons. There is no corporation in the world and never can be, for business purposes at any rate, that is not simply a form of association of human beings just like the association of the laborers.
>
> He deals, therefore, on the other side with a human being, and he wishes to earn the highest wage he can. If he gets that wage paid to him, the thing that he has done must be worth the money that is paid to him for doing it or his employer will fail, and then he will have nothing to do and the whole business will stop. That sort of thing has happened a thousand times, and it is happening every day in every State of the Union where an enterprise in which five men, ten men, one hundred men, a thousand men and women are engaged in helping carry on by the work of their hands, for wages, goes down into the bottomless pit of bankruptcy because the amount of wages paid and the other expenses of the establishment do not bring out money enough to carry it on on that scale. There is no getting away from that, and therefore if the wage-earner is to command the operation of the statute and the wage-payer can not go to the community and to his

brother manufacturers in the same town and say, "Let us agree to put up the wages of our laborers in all our establishments, as they wish a dollar a day more, and let us put the price on our commodity that goes out a dollar a ton more, or whatever it may be, to make that good so that we can all live and get on," the two sides of the equation are not on an equal footing.

On the one side you say that is a crime and on the other side you say it is a valuable and proper undertaking. That will not do, Mr. President. You can not get on in that way. It is impossible to separate them; and the principle of it, therefore, is that if one side, no matter which it is, is authorized to combine the other side must be authorized to combine, or the thing will break and there will be universal bankruptcy. That is what it will come to, and then the laborer, whose interest and welfare we are all so really desirous to promote, will turn around and justly say to the Senate of the United States, "Why did you go to such legislation as that? Why did you attempt to stimulate and almost require us to combine against our employers, and thus break down the whole industry of the country and leave us all beggars? When you allowed us to combine and to regulate our wages, why did you not allow the products that our hands produced to be raised in price by an arrangement, so that everybody that bought them might pay the increased price, and everybody that was making them all around for whom we were working could live also?" I do not think, as a practical thing, Mr. President, that anybody will thank us for making a distinction of that kind.

After this debate and on the same day, March 27, 1890, the bill, including the proviso which had been attached to Section 1 by amendment, was referred to the Committee on the Judiciary. On April 2, 1890, the bill as amended by the Committee on the Judiciary was reported back, Section 1 reading as follows:

SEC. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

The labor proviso, it will be noted, had been stricken by the Committee. No report of the proceedings of the Committee can be found, nor was there any further debate on the bill with reference to the labor question. The substitute bill was agreed to in the Committee of the Whole and was reported to the Senate. On April 8, the bill was passed by the Senate. The title was amended so as to read: "A bill to protect trade and commerce against unlawful restraints and monopolies."

On June 20, 1890, the bill was passed by the House in the same form as it had passed the Senate. During the debate in the House, there was no illuminating discussion with reference to the applicability of the bill to labor organizations. The Act became effective on July 2, 1890. 26 Stat. 209.

A complete presentation of the case favoring the applicability of the Sherman Act to labor organizations is most forcefully presented by Professor Mason in his book "Organized Labor and the Law" (1925). Professor Mason bases his argument both on the legislative history of the Act and upon the common law background heretofore set forth. His argument proceeds somewhat as follows:

(1) As introduced the bill rendered illegal "combinations and arrangements" which prevented "full and free competition." Despite Senator Sherman's assertion to the contrary, Senators George and Teller insisted that the bill would be applicable to labor organizations.

(2) Senator Sherman proposed a proviso which would exclude labor organizations from the provisions of the bill. This proviso was adopted by the Senate in the Committe of the Whole.

(3) The proviso was then vigorously attacked by Senator Edmunds who insisted that the bill should be framed in such a manner as would be applicable to labor organizations as well as to other types of combinations and organizations.

(4) The bill was then sent to the Judiciary Committee, of which Senator Edmunds was Chairman. Senators Hoar and George were also members of this Committee.

(5) The bill was next reported from the Judiciary Committee. No committee report was available. The proviso exempting labor organizations had been deleted and the bill now declared the following to be illegal: "Every contract or combination in the form of rust or otherwise, or conspiracy, in restraint of trade or commerce." The bill passed Congress in this form.

Professor Mason concludes his argument as follows:

It is, indeed, a noteworthy fact that this section, unlike the corresponding provision introduced by Senator Sherman, is not confined to a denial of "all arrangements, contracts, agreements," etc., made with the purpose of preventing "full and free competition" —that is, all arrangements in form of trusts. It goes much further and denounces every contract and combination in restraint of trade, whether in "the form of

trusts or otherwise." Nor is this all. The bill was extended at the same time to "conspiracies in restraint of trade."

Clearly these modifications carry no small significance regarding the intention of those responsible therefor. The elimination of the proviso exempting labor from the operation of the bill; the addition of the term "conspiracy"; and above all the substitution of the phrase "restraint of trade" for "full and free competition"; all this, together with the avowed attitude of Senator Edmunds toward exemptions, would seem to indicate an intention on the part of the judiciary committee to deal with the evils growing out of combinations more broadly than was originally contemplated. (p. 127).

Supreme Court interpretation of the Sherman Act. *Loewe* v. *Lawlor*, 208 U. S. 274, decided by the unanimous preme Court in 1908 (a bench that included Mr. Justice lmes in its membership) the Supreme Court first passed on the question of the applicability of the Sherman Act labor organizations and decided that that Act did apply. ere the complaint averred that the defendants, members a labor union, combined among themselves and with the F. of L. to apply and did apply a boycott against plain-'s products and others who handled plaintiff's prod-ts in some 20 states, in an effort to compel the ionization of plaintiff's factory. In holding that this ne within the prohibition of the Sherman Act, the unani-ous Court speaking through Chief Justice Fuller, said:

> The averments here are that there was an existing interstate traffic between plaintiffs and citizens of other States, and that for the direct purpose of destroying such interstate traffic defendants combined not merely to prevent plaintiffs from manufacturing articles then

and there intended for transportation beyond the State, but also to prevent the vendees from reselling the hats which they had imported from Connecticut, or from further negotiating with plaintiffs for the purchase and intertransportation of such hats from Connecticut to the various places of destination. So that, although some of the means whereby the interstate traffic was to be destroyed were acts within a State, and some of them were in themselves as a part of their obvious purpose and effect beyond the scope of Federal authority, still, as we have seen, the acts must be considered as a whole, and the plan is open to condemnation, notwithstanding a negligible amount of intrastate business might be affected in carrying it out. If the purposes of the combination were, as alleged, to prevent any interstate transportation at all, the fact that the means operated at one end before physical transportation commenced and at the other end after the physical transportation ended was immaterial.

Nor can the act in question be held inapplicable because defendants were not themselves engaged in interstate commerce. The act made no distinction between classes. It provided that "every" contract, combination or conspiracy in restraint of trade was illegal. The records of Congress show that several efforts were made to exempt, by legislation, organizations of farmers and laborers from the operation of the act and that all these efforts failed, so that the act remained as we have it before use.

In an early case, *United States* v. *Workingmen's Amalgamated Council*, 54 Fed. Rep. 994, the United States filed a bill under the Sherman act in the Circuit Court for the Eastern District of Louisiana, averring the existence of a "gigantic and widespread combination of the members of a multitude of separate organizations for the purpose of restraining the commerce among the several States and with foreign countries,"

and it was contended that the statute did not refer to combinations of laborers. But the court, granting the injunction, said:

"I think the Congressional debates show that the statute had its origin in the evils of massed capital; but, when the Congress came to formulating the prohibition, which is the yardstick for measuring the complainant's right to the injunction, it expressed it in these words: 'Every contract or combination in the form of trust, or otherwise in restraint of trade or commerce among the several States or with foreign nations, is hereby declared to be illegal.' The subject had so broadened in the minds of the legislators that the source of the evil was not regarded as material, and the evil in its entirety is dealt with. They made the interdiction include combinations of labor, as well as of capital; in fact, all combinations in restraint of commerce, without reference to the character of the persons who entered into them. It is true this statute has not been much expounded by judges, but, as it seems to me, its meaning, as far as relates to the sort of combinations to which it is to apply, is manifest, and that it includes combinations which are composed of laborers acting in the interest of laborers.

* * * * * * *

The case was affirmed on appeal by the Circuit Court of Appeals for the Fifth Circuit. 57 Fed. Rep. 85.

Subsequently came the litigation over the Pullman strike and the decisions, *In re Debs*, 64 Fed. Rep. 724, 745, 755; *S. C.*, 158 U. S. 564. The bill in that case was filed by the United States against the officers of the American Railway Union, which alleged that a labor dispute existed between the Pullman Palace Car Company and its employes; that thereafter the four officers of the railway union combined together and with others to compel an adjustment of such dispute by creating a

boycott against the cars of the car company; that to make such boycott effective they had already prevented certain of the railroads running out of Chicago from operating their trains; that they asserted that they could and would tie up, paralyze and break down any and every railroad which did not accede to their demands, and that the purpose and intention of the combination was "to secure unto themselves the entire control of the interstate, industrial and commercial business in which the population of the city of Chicago and of other communities along the lines of road of said railways are engaged with each other, and to restrain any and all other persons from any independent control or management of such interstate, industrial or commercial enterprises, save according to the will and with the consent of the defendants."

The Circuit Court proceeded principally upon the Sherman Anti-Trust law, and granted an injunction. In this court the case was rested upon the broader ground that the Federal Government had full power over interstate commerce and over the transmission of the mails, and in the exercise of those powers could remove everything put upon highways, natural or artificial, to obstruct the passage of interstate commerce or the carrying of the mails. But in reference to the Anti-Trust Act the court expressly stated (158 U. S. 600):

"We enter into no examination of the act of July 2, 1890, c. 647, 26 Stat. 209, upon which the Circuit Court relied mainly to sustain its jurisdiction. It must not be understood from this that we dissent from the conclusions of that court in reference to the scope of the act, but simply that we prefer to rest our judgment on the broader ground which has been discussed in this opinion, believing it of importance that the principles underlying it should be fully stated and affirmed."

And in the opinion, Mr. Justice Brewer, among other things, said (p. 581):

"It is curious to note the fact that in a large proportion of the cases in respect to interstate commerce brought to this court the question presented was of the validity of state legislation in its bearings upon interstate commerce, and the uniform course of decision has been to declare that it is not within the competency of a State to legislate in such a manner as to obstruct interstate commerce. If a State, with its recognized powers of sovereignty, is impotent to obstruct interstate commerce, can it be that any mere voluntary association of individuals within the limits of that State has a power which the State itself does not possess?" (208 U. S. pp. 300-302, 302-304)

The principles set forth in this case were reaffirmed by the opinion of Mr. Justice Holmes in the later case of *Lawlor* v. *Loewe*, 235 U. S. 522, in upholding an award of damages granted after trial.

Certain conclusions can be drawn with reference to the intent of the Sherman Act, despite its fragmentary history. The cardinal principle of statutory construction is that first resort must be had to the language used, and that other sources of enlightenment may only be looked to if such language is ambiguous. The language of the Sherman Act, whether given its literal meaning or that which would be derived from its common law setting, is clear. All conspiracies in restraint of trade, which at common law would have included restraints by labor (*Callan* v. *Wilson, supra*), are declared to be illegal.

Furthermore, when the Sherman Act was under consideration by the Senate a proviso was added to Section 1 specifically providing an exemption for labor organizations. 21 Cong. Rec. 2611, 2654-2655. The bill as amended was

referred to the Committee on Judiciary and when it was reported out from that Committee the proviso had been stricken. 27 Cong. Rec. 2901. In view of the debate which had taken place with respect to the question of the application of the Act to labor, the only fair inference which may be drawn from the action of the Senate in striking out the proviso and enacting the bill without it is that there was no intention to confer a general exemption upon labor organizations. In other words, proceedings in the Senate join with the usual presumption that the language used in the Sherman Act should be given its normal and literal meaning. As we have seen, that was the decision of the Supreme Court in *Loewe* v. *Lawlor, supra*. Mr. Justice Frankfurter, writing in conjunction with Greene in the volume "The Labor Injunction" (1930), expresses his view of the applicability of the Sherman Act in the following language:

> Passed primarily as a safeguard against the social and economic consequences of massed capital, the Sherman Law provided broadly that "every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal." Now a "conspiracy" had at this time been defined by the Supreme Court substantially in the language of Lord Denman [1] "* * * a combination of two or more persons by concerted action, to accomplish a criminal or unlawful purpose, or some purpose not in itself criminal or unlawful, by criminal or unlawful means [2] * * *. The first interpretation of the Sherman Law came from the lower courts. In 1893 one of the district courts held that "they (Congress) made the interdiction include combinations of labor, as

[1] See **Jones** Case, 4 B. & Ad. 345, 349 (1832).

[2] **Pettibone v. United States**, 148 U. S. 197, 203 (1892); **Duplex Co. v. Deering**, 254 U. S. 443, 465 (1921).

well as of capital." Succeeding decisions with but a single exception accumulated to the same effect. This view ultimately received the Supreme Court's sanction. The most definite exposition of the Sherman Law was made in the *Gompers* case [221 U. S. 418]: "It (the Sherman Law) covered any illegal means by which interstate commerce is restrained, whether by unlawful combinations of capital, or * * * of labor; and we think also whether the restraint be occasioned by unlawful contracts, trusts, pooling arrangements, blacklists, boycotts, coercion, threats, intimidation, and whether these be made effective, in whole or in part, by acts, words or printed matter." (pp. 8-9)

Mr. Justice Frankfurter (*ibid*, p. 8, footnote 36) points out that it was the purposeful intention of Congress to pass to the courts "the burden of clarifying language purposely left obscure." In support of this statement the remarks of Senator Edmunds of the Judiciary Committee are cited and also comments of Senator Hoar taken from his autobiography.

As might be expected, the decisions in *Loewe* v. *Lawlor*, *supra*, and *Lawlor* v. *Loewe*, *supra*, drew sharp rebuke from organized labor.

A campaign was immediately instituted to bring about the passage of legislation which would withdraw labor unions from the scope of the federal antitrust laws, and several attempts were made in Congress to achieve this end, without success. S. 4233, H.R. 8917, 56th Cong., 1st Sess.; H.R. 89; H.R. 1234; H.R. 4063, 58th Cong., 1st Sess.; H.R. 6782; H.R. 8136, 58th Cong., 2d Sess.; H.R. 4445, 59th Cong., 1st Sess.; H. R. 17137, 60th Cong., 1st Sess., H.R. 3058, 61st Cong., 1st Sess. Such attempts had been begun shortly after the lower court decisions which had declared labor groups to be within the purview of the

Sherman Act. Frankfurter and Greene, *op. cit. supra*, pp. 139-141.

In 1911, in *Standard Oil Company* v. *United States*, 221 U.S. 1, it was held that illegal combinations could be dissolved under the provisions of the Sherman Act. This, coming after the *Loewe* case, caused union leaders to become apprehensive that unions might be dissolved under the law. Consequently the efforts on the part of labor organizations to obtain a legal status were greatly intensified.

Promises were made to labor during the presidential campaign of 1912. The Democratic national platform committed itself to the exemption of labor and farm organizations from the provisions of the Sherman law. Frankfurter and Greene, *op. cit. supra*, p. 141. As a result of these campaign promises, renewed efforts were instituted in behalf of labor organizations.

It is clear that labor in general contemplated complete exemption of its organizations from the Sherman law. The primary threat, however, in the light of the *Standard Oil* case, was the possibility that under the Sherman Act, all associations and combinations of workers might be subject to dissolution regardless of the extent of their activities.

Legislative History of the Clayton Act. On the failure of the numerous bills referred to above there was a widespread feeling in the campaign of 1912 that something should be done to improve the condition of labor, and at least to remove from it the threat of dissolution of labor unions under the Sherman Act.

In 1912, after an extensive hearing, the House Judiciary Committee reported out a bill for the "regulation of injunctions" (H.R. 23635, 62nd Cong., 2d Sess.); see H.R.

Rept. No. 612, 62d Cong., 2d Sess.; 48 Cong. Rec. 6458 (1912). This bill was designed in part to add to Section 266 of the Judicial Code paragraphs governing the issuance of injunctions in labor disputes. Section 266 c which ultimately became, with slight modification, Section 20 of the Clayton Act read as follows:

> That no restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving or growing out of a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property or to a property right of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.
>
> And no such restraining order or injunction shall prohibit any person or persons from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at or near a house or place where any person resides or works, or carries on business, or happens to be for the purpose of peacefully obtaining or communicating information or of peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute; or from recommending, advising, or persuading others by peaceful means so to do; or from paying or giving to or withholding from any person engaged in such dispute any strike benefits or other moneys or things of value; or from peaceably

assembling at any place in a lawful manner and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto.

This bill did not purport to modify the Sherman Act in any way. The committee report (H.R. Rept. 612, 62d Cong., 2d Sess., p. 37) states that—

> The bill does not interfere with the Sherman Anti-trust Act at all; it leaves the law of conspiracy untouched * * *

With respect to the second paragraph of Section 266 c the report stated (*id.*, at p. 30):

> The second paragraph of section 266c is concerned with specific acts which the best opinion of the courts holds to be within the right of parties involved upon one side or the other of a trades dispute. The necessity for legislation concerning them arises out of the divergent views which the courts have expressed on the subject and the difference between courts in the application of recognized rules. * * *

The report then proceeded to review judicial decisions and secondary authorities indicating the "best opinion of the courts" with respect to the legality of different types of labor activity. With respect to the strike, the report stated that the bill forbade the courts only to interfere with the right of workmen to lawfully combine and to adopt methods which are lawful (*id.*, p. 32). With respect to a boycott the report quoted with approval from several authorities indicating that the "primary" boycott, but not the secondary boycott, was legal (*id.*, pp. 33-35).

This bill was characterized by John W. Davis, then a Congressman from West Virginia, who supported it, as an "effort to crystallize into law the best opinions of the

courts" (48 Cong. Rec. 6438). The bill passed the House as reported (48 Cong. Rec. 6470-71), and was submitted to the Senate Judiciary Committee but not reported out during that session of Congress.

On April 14, 1914, Representative Clayton introduced into the Sixty-third Congress H.R. 15657, entitled "A Bill to Supplement Existing Laws Against Unlawful Restraints and Monopolies and for Other Purposes". The bill was referred to the Judiciary Committee and reported from that committee on May 6, 1914 (H.R. Rept. 627, 63d Cong., 2d Sess.). The bill, which subsequently became the Clayton Act, contained a number of important amendments to the antitrust laws. Sections 15 to 18 of the bill were substantially the same as the bill to regulate injunctions passed by the House in 1912, Section 18 being identical with Section 266 c of the prior bill. With respect to these sections the House committee report adopted and incorporated in full the report on the 1912 Act already described.

Section 7 of the bill as reported also related to labor. This section provided that—

> Sec. 7. That nothing contained in the antitrust laws shall be construed to forbid the existence and operation of fraternal, labor, consumers, agricultural, or horticultural organizations, orders, or associations instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations, orders, or associations from carrying out the legitimate objects thereof.

The committee report stated that—

> The objection of section 7 is to make clear certain questions about which doubt has arisen as to whether or not fraternal, labor, consumers, agricultural, or

horticultural organizations, orders, or associations organized for mutual help, not having capital stock or conducted for profit, come within the scope and purview of the Sherman antitrust law in such way as to warrant the courts under interpretations heretofore given to that law to enter a decree for the dissolution of such organizations, orders, or associations upon a proper showing, as may be done in regard to industrial corporations and combinations which have been found to be guilty of violation of its provisions.

The report quoted at length from the testimony of Mr. Gompers at the hearing before the Judiciary Committee. The remarks quoted (H.R. 612, 62nd Cong., 2nd sess.) showed that Mr. Gompers was concerned with the possibility that labor organizations might be dissolved under the antitrust laws as recently interpreted. The committee report then concludes:

> In the light of previous decisions of the courts and in view of a possible interpretation of the law which would empower the courts to order the dissolution of such organizations and associations, your committee feels that all doubt should be removed as to the legality of the existence and operations of these organizations and associations, and that the law should not be construed in such a way as to authorize their dissolution by the courts under the antitrust laws or to forbid the individual members of such associations from carrying out the legitimate and lawful objects of their associations. This will be accomplished by the provisions of section 7 of this bill, * * *. It also guarantees to individual members of such organizations, orders, or associations, the right to pursue without molestation or legal restraint the legitimate objects of such association. * * *

Section 18 of the bill was amended at the suggestion of the committee so as to add to it the phrase "nor shall any of the acts specified in this paragraph be considered or held unlawful" (51 Cong. Rec. 9652). The purpose of this amendment was to conform the law on the law side of the court to the law prescribed in paragraph 18 for the equity side.

Representatives Nelson and Volstead and Representative Morgan submitted minority reports in which they declared that section 7 as framed was vague and indefinite and that by its provisions no concession was extended to labor organizations.

Representative Floyd, a member of the Committee on the Judiciary, was the first to undertake an analysis of the bill on the floor of the House. Representative Floyd's construction of Section 7 was that it was not intended to exempt labor organizations from the provisions of the Sherman Act but rather that it was intended to assure labor against prosecution for combination and association, *per se*. Speaking a few days later Representative Madden expressed the same opinion. Representatives Nelson, Sherwood, Kelly, and MacDonald were of the same view and criticized the bill for that reason.

In consequence of the debate which had arisen with reference to the meaning of Section 7, Representative Webb on June 1, 1914, proposed the following amendment to that section:

> Nor shall such organizations, orders, or associations, or members thereof, be held or construed to be illegal combinations in restraint of trade under the antitrust laws.

Representative Henry declared that this proposal was made at the request of himself and a number of other rep-

resentatves, that its adoption would clearly exempt labor organizations from the provisions of the antitrust laws, and that it was acceptable to counsel for the labor organizations. On the other hand Representative Madden declared that the addition was "superfluous and merely senseless repetition in its purport of what precedes". Representative Webb seemed to be in accord with this view despite the previous declaration of Representative Henry. He said, in answer to a question from Representative Murdock:

> Now, I will say frankly to my friend that we never intended to make any organizations, regardless of what they might do, exempt in every respect from the law. I would not vote for any amendment that does do that.

The majority of the House seemed to be of the opinion that this amendment would add little, if anything, to the meaning of Section 7 as it had been reported from the Judiciary Committee.

Representative Thomas, who had stated that the amendment "means nothing" and was "a mere declaration of that which is now the law," then proposed a "clear-cut" exemption providing that

> The provisions of the antitrust laws shall not apply to agricultural, labor, consumers, fraternal, or horticultural organizations, orders or associations.

A vote was taken and this amendment was rejected. The Webb amendment was then voted upon and adopted.

The question of whether the secondary boycott was to be legalized was considered in the debates on Section 18 of the bill. To the suggestion that Section 18 would legalize the secondary boycott, Representative Webb declared:

> I will say frankly to my friend when this section was drawn it was drawn with the careful purpose not

to legalize the secondary boycott, and we do not think it does. There may be a difference of opinion about it, but it is the opinion of the committee that it does not legalize the secondary boycott and is not intended to do so.

On June 5, 1914, the bill was reported to the House by Committee of the Whole and was immediately passed. June 6 the bill was reported to the Senate and referred the Committee on the Judiciary. On June 22 the bill was orted out by Senator Culberson (Sen. Rept. No. 698, 63d ng., 2d Sess.). At the beginning of the report it was ted generally that—

> * * * the general scope of the House measure is unchanged. It is not proposed by the bill or amendments to alter, amend, or change in any respect the original Sherman Antitrust Act of July 2, 1890. The purpose is only to supplement that act and the other antitrust acts referred to in section 1 of the bill.
>
> * * * * * * *
>
> The other important and general purposes of the bill are to exempt labor, agricultural, horticultural, and other organizations from the operation of the antitrust acts; to regulate the issuance of temporary restraining orders and injunctions generally by the Federal courts, and particularly in labor controversies, and to make provision for the trial by jury of contempts committed without the presence of the court.

e report then quoted in full and with apparent approval House committee report, including the 1912 report inrporated therein, *supra*.

The report then states that "the general scope of the ouse bill is followed in the Senate amendments", and oceeds to take up the individual sections (p. 42). With spect to Section 7, the Senate inserted the word "law-

fully" before the phrase "carrying out the legitimate objects thereof" (p. 59), and struck out "fraternal" and "consumers" organizations from the exemption, stating that

> * * * But the principal consideration which moved the Committee to strike out "consumers", which also applies in a less degree to "fraternal" organizations, is that they believe the only organizations which should be excluded from the operation of the antitrust laws are those where labor is the basis or one of the chief factors in the organizations, as in the case of labor organizations proper, and in agricultural and horticultural organizations. The Committee rest this distinction upon the broad ground that labor is not, and ought not to be regarded as, a commodity; within the purview of antitrust laws.

Section 18 was amended by inserting the word "lawful" in the clause relating to the withholding of patronage, and by substituting in the last clause the phrase "to be violations of the antitrust laws" in place of the word "unlawful".*

On August 5, 1914, the Senate, acting in Committee of the Whole, undertook consideration of the bill. The debates and discussions reveal a considerable amount of confusion in the minds of the Senators regarding the purpose of the Clayton Act. Much of this confusion is readily explained when we bear in mind that the discussion was held immediately preceding a crucial mid-term election in November, 1914. It is a fair inference that much of the discussion favorable to the side of labor, particularly the general reference to the Clayton Act as a "new charter of

*This clause, as amended, read "nor shall any of the acts specified in this paragraph be considered or held to be violations of the antitrust laws."

reedom for labor," was directed in part, at least, to ob-
ining the labor vote rather than to the clarification of the
layton Act. The best lawyers among the Senators, how-
er, were in no doubt as to the limited scope of the amend-
ents provided by the Clayton Act. Thus Senator Borah
oke as follows:

> I think no one should be misled and I feel that it is entirely proper to make known what we do not do as well as what we propose to do. The only effect of it, in my judgment, will be to remove the possibility of an attack upon the organization as such, which in my judgment at this time could not be successfully made. In other words, it removes a fear, possibly well grounded, but in my judgment unfounded in the law as it now exists. This section gives these organizations a status and permits them to lawfully carry out their legitimate purposes.
>
> Doubtless the impression prevails among workingmen of the country that, according to the decisions of the court, labor organizations of themselves, organized for the purpose of protecting their wage, when guilty of any overt act in raising the wage are within the prohibition of the Sehrman law. If such were the law, no one would want it so; but that such is not the law I entertain no doubt. The only effect of this section, therefore, standing alone and as reported from the committee, is to set at rest the fear that these organizations *per se* may be attacked and dissolved under the Sherman law.

nator Thomas spoke to the same effect, as follows:

> • • • But, Mr. President, after listening to the arguments on this floor upon the meaning and effect of this section, it has occurred to me that its recitals are not commonly understood, and that too great latitude has been given to its provisions. Notably, on

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yesterday the declaration was made on at least two occasions to the effect that if section 7 was enacted into law it would wholly exempt labor and agricultural organizations from the operation of the antitrust act.

Mr. President, whatever else we may do we can not afford to enact legislation that is going to prove a disappointment in its practical operation, and this will prove to be a disappointment if statements of that sort are allowed to go unchallenged, because I do not believe that this section does or that it should wholly exempt any class of citizens completely and permanently from the operation of the general statutes of the country. Such legislation is dangerous in the extreme, and the more dangerous in that it is bound to become a precedent upon which other classes and other interests will found their subsequent contentions for similar legislation to the ultimate undoing of free institutions, for I think it may be stated as a general proposition that no legislation, unless it becomes absolutely unavoidable should be enacted of a general character which does not have a general application.

* * * * * *

Therefore, with reference to this branch of the subject I may summarize the situation by the statement that section 7 makes so far as the antitrust laws are concerned all labor and agricultural associations lawful and endows them with power, if they did not have it before, of carrying out in a lawful manner the legitimate purposes and objects of their organizations, but they may nevertheless so act as to violate the law just as corporations or individuals may violate it by conduct which brings them within its prohibitions.

Senator Hughes and Senator Jones also spoke to the same effect and Senator Thompson, one of the foremost labor advocates in the Senate, replied to a question of Senator Jones as follows during the course of his speech:

Mr. Jones. I desire to get the views of the Senator from Kansas as to how far he thinks this provision of the proposed law goes. Does it go any further than recognizing the legality of these organizations, or does it permit these organizations, after they are organized, to then go on and do things in restraint of trade and exempt them from prosecution for such acts?

Mr. Thompson. I think it exempts them simply as lawful organizations; but, of course, if they do anything unlawful or use any unlawful means, they are subject to prosecution under the antitrust law and under the general laws on the subject without regard to the antitrust law.

On September 2, 1914, section 7 of the bill was amended inserting at the beginning of the section the following rds, "That the labor of a human being is not a comlity or article of commerce."

This amendment was passed in response to the deads of labor organizations who apparently believed that amendment would cause laws enacted under the comce clause to be inapplicable to labor. No Senator seemed ave any ideas, clear or otherwise, as to what effect this vision would have, if any, or what it meant.

On the same day, September 2, 1914, the bill as ended was passed by the Senate. The significant amendts have been pointed out above.

On September 4, 1914, the bill was returned to the ate from the House without agreement upon the proed Senate amendments and with a proposal for a conence, to which proposal the Senate agreed. It should be ed, however, that the House expressed no dissatisfac with sections 7 or 18 (19) as amended and passed by Senate.

In the conference the section which had been designated as "7" was changed to "6" and the section which had been designated as "18" was changed to "20." The Conference Committee did not change the substance of either section in any material degree.*

Upon the return of the bill to the Senate from the Conference Committee, several extended speeches were made with reference to the labor provisions. The tenor of these speeches indicates that the prevailing opinion was to the effect that sections 6 and 20 would not serve to exempt labor organizations from the provisions of the Sherman Act. Several senators ventured the opinion that section 20 would legalize the secondary boycott but the prevailing view seemed to be to the contrary. A number of senators expressed the view that sections 7 and 20 would not serve to alter the existing law in any manner or degree.

The same view was expressed in the House discussion of the Conference bill. With reference to section 6, Representative Webb, who had been a House member of the Conference Committee, said:

> Mr. Speaker, in our old section 7, section 6 of the conference report, known as the labor section, the Senate inserted these words:
>
> "The labor of a human being is not a commodity or article of commerce."
>
> Of course that is a mere legislative declaration or postulate. I do not think it does any harm. I do not know that it does any good. Your conferees agreed to let it remain.

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* See comparative print showing H. R. 15657 as Passed by the House, as Passed by the Senate and as Agreed to in Conference, Doc. 584, 63d Cong., 2d sess.

In answer to a question from Representative Stafford with reference to the object of the addition of the word "lawfully," Mr. Webb said:

> I do not know what moved the Senate to put that word in. We had no objection to it, and hence accepted the amendment.

Very little else was said in either the House or the Senate with reference to the addition to section 6 of the clause, "The labor of a human being is not a commodity or article of commerce." The general opinion with reference to this amendment was tersely stated in one sentence by Representative Volstead, shortly before the bill was finally passed in the House. Mr. Volstead said: "As it reads it is hard to tell what it means."

The bill passed both the House and the Senate without further amendment.

A person seeking to discover what the Congress which enacted the Clayton Act intended does not encounter the difficulties occurring in the search for the legislative history of the Sherman Act. There are no missing links in the legislative process. All the usual sources of information as to legislative intention are available.

The committee reports and the statements of the members of the committees, including the Conference Committee, are all in accord that the Clayton Act was *not* designed totally to exempt labor from the antitrust laws. These statements show that Congress intended to safeguard the existence of labor organizations against possible dissolution, and also to protect those types of conduct which most, but not all, courts already regarded as legal. Although there was some diversity of opinion in the debates on the

floor most of the speakers in both the Senate and House took the same view.

In view of the fact that the secondary sources of legislative intention indicate that it was not intended completely to exempt labor from the antitrust laws, the only remaining question is whether the language of the statute so clearly compels a different conclusion that the legislative history cannot be used.

Section 20 does not purport to make all the activities of labor unions lawful under the antitrust laws. The controversy with respect to that section has related to whether or not the peaceful secondary boycott is made lawful, a subject which we will consider in connection with *Duplex Printing Press Co.* v. *Deering*, 254 U. S. 443. But no matter how liberally the section be construed, the use of force and violence by labor organizations is not protected. Thus, it cannot be said that that section gives labor a complete exemption.

Section 6 contains three clauses. The first, providing that, "The labor of a human being is not a commodity or article of commerce," cannot be said to have any definite, substantive meaning. Even though this statement was hailed by labor as making the Clayton Act "Labor's Magna Charta", it is clear that the members of Congress neither knew what the clause meant nor expected it to be of any great consequence.

Section 6 then provides that—

> Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor • • • organizations, • • • or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof • • •;

This language does not protect the individual members of labor organizations from acting unlawfully or from carrying out illegitimate objects, and accordingly grants labor no general immunity. While it protects the existence of labor organizations, it does not appear otherwise to change the prior law, which of course did not forbid individual members from lawfully carrying out legitimate objects.

The last clause of Section 6, which follows immediately after that just discussed, provides that—

> • • • nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust law.

This clause by itself might be regarded as granting labor complete exemption from the antitrust laws. It certainly is susceptible of such a construction. But it also might be interpreted, since it does not refer to the *acts* of labor organizations or of their members but only to the organizations and members themselves, as merely protecting them against an unlawful status.

This clause cannot be read alone. Section 6 and particularly the last sentence must be taken as a whole. If the last clause be given the more sweeping of the two interpretations, the preceding clause, which protects only the existence of labor organizations and their lawful and legitimate activities, would be rendered entirely unnecessary and meaningless. On the other hand, if the last clause be given the second, more restrictive interpretation, it adds nothing to the preceding clause and in turn becomes meaningless. Thus, although the last clause in itself might be deemed to have a clear meaning, section 6 as a whole is plainly ambiguous. This ambiguity justifies resort to the

legislative history. As has been shown, this indicates that it was the prevailing view of Congress that the last clause of section 6 added nothing to what preceded it, and that it did not absolutely exempt members of labor organizations from the antitrust laws.

Supreme Court Interpretation of the Clayton Act. As we have seen above, it was the apparent intent of Congress in the Clayton Act that nothing in the antitrust laws shall be construed to forbid the existence and operation of labor organizations, but that the Clayton Act did not operate to exempt them or their members from accountability when they departed from legitimate objectives. In *Duplex Co.* v. *Deering*, 254 U. S. 443, complainant sought to enjoin defendant labor union officials, who were seeking to unionize complainant's factory, from further interference with complainant's interstate trade by means of "secondary" boycotts, sympathetic strikes in other trades, and threats to third parties. This was the first case involving the application of the Clayton Act to labor organizations to come before the Supreme Court. Cf. *Paine* v. *Neal*, 244 U. S. 459. In holding that the Clayton Act did not exempt labor organizations or their members from the provisions of the Sherman Act, the Court said (at 469):

> As to §6, [of the Clayton Act] it seems to us its principal importance in this discussion is for what it does *not** authorize, and for the limit it sets to the immunity conferred. The section assumes the normal objects of a labor organization to be legitimate, and declares that nothing in the anti-trust laws shall be construed to forbid the existence and operation of such organizations or to forbid their members from *lawfully** carrying out their *legitimate** objects; and that

*Italics the Court's.

such an organization shall not be held in itself—merely because of its existence and operation—to be an illegal combination or conspiracy in restraint of trade. But there is nothing in the section to exempt such an organization or its members from accountability where it or they depart from its normal and legitimate objects and engage in an actual combination or conspiracy in restraint of trade. And by no fair or permissible construction can it be taken as authorizing any activity otherwise unlawful, or enabling a normally lawful organization to become a cloak for an illegal combination or conspiracy in restraint of trade as defined by the antitrust laws.

The Court considered the legislative history of the Clayton Act and said (at 472 *et seq.*):

Nor can §20 be regarded as bringing in all members of a labor organization as parties to a "dispute concerning terms or conditions of employment" which proximately affects only a few of them, with the result of conferring upon any and all members,—no matter how many thousands there may be, nor how remote from the actual conflict—those exemptions which Congress in terms conferred only upon parties to the dispute. That would enlarge by construction the provisions of §20, which contain no mention of labor organizations, so as to produce an inconsistency with §6, which deals specifically with the subject and must be deemed to express the measure and limit of the immunity intended by Congress to be incident to mere membership in such an organization. At the same time it would virtually repeal by implication the prohibition of the Sherman Act, so far as labor organizations are concerned, notwithstanding repeals by implication are not favored; and in effect, as was noted in *Loewe* v. *Lawlor*, 208 U. S. 274, 303-304, would confer upon voluntary associations of individuals formed within the States a control over commerce among the

States that is denied to the governments of the States themselves.

The qualifying effect of the words descriptive of the nature of the dispute and the parties concerned is further borne out by the phrases defining the conduct that is not to be subjected to injunction or treated as a violation of the laws of the United States, that is to say: (a) "terminating any relation of employment, * * * or persuading others by peaceful and lawful means so to do"; (b) "attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working;" (c) "ceasing to patronize or to employ any party to such dispute, or * * * recommending, advising, or persuading others by peaceful and lawful means so to do"; (d) "paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits * * *"; (e) "doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto." The emphasis placed on the words "lawful" and "lawfully," "peaceful" and "peacefully," and the references to the dispute and the parties to it, strongly rebut a legislative intent to confer a general immunity for conduct violative of the anti-trust laws, or otherwise unlawful. The subject of the boycott is dealt with specifically in the "ceasing to patronize" provision, and by the clear force of the language employed the exemption is limited to pressure exerted upon a "party to such dispute" by means of "peaceful and *lawful**" influence upon neutrals. There is nothing here to justify defendants or the organizations they represent in using either threats or persuasion to bring about strikes or a cessation of work on the part of employees of complainant's customers or pro-

*Italics the Court's.

spective customers, or of the trucking company employed by the customers, with the object of compelling such customers to withdraw or refrain from commercial relations with complainant, and of thereby constraining complainant to yield the matter in dispute. To instigate a sympathetic strike in aid of a secondary boycott cannot be deemed "peaceful and lawful" persuasion. In essence it is a threat to inflict damage upon the immediate employer, between whom and his employees no dispute exists, in order to bring him against his will into a concerted plan to inflict damage upon another employer who is in dispute with his employees.

The majority of the Circuit Court of Appeals, very properly treating the case as involving a secondary boycott, based the decision upon the view that it was the purpose of §20 to legalize the secondary boycott "at least in so far as it rests on, or consists of, refusing to work for any one who deals with the principal offender." Characterizing the section as "blindly drawn," and conceding that the meaning attributed to it was broad, the court referred to the legislative history of the enactment as a warrant for the construction adopted. Let us consider this.

By repeated decisions of this court it has come to be well established that the debates in Congress expressive of the views and motives of individual members are not a safe guide, and hence may not be resorted to, in ascertaining the meaning and purpose of the law-making body. *Aldridge* v. *Williams*, 3 How. 9, 24; *United States*. v. *Union Pacific R. R. Co.*, 91 U. S. 72, 79; *United States* v. *Trans-Missouri Freight Association*, 166 U. S. 290, 318. But reports of committees of House or Senate stand upon a more solid footing, and may be regarded as an exposition of the legislative intent in a case where otherwise the mean-

ing of a statute is obscure. *Binns* v. *United States*, 194 U. S. 486, 495. And this has been extended to include explanatory statements in the nature of a supplemental report made by the committee member in charge of a bill in course of passage. *Binns* v. *United States, supra; Pennsylvania R. R. Co.* v. *International Coal Co.*, 230 U. S. 184, 198-199; *United States* v. *Coca Cola Co.*, 241 U. S. 265, 281; *United States* v. *St. Paul, Minneapolis & Manitoba Ry. Co.*, 247 U. S. 310, 318.

In the case of the Clayton Act, the printed committee reports are not explicit with respect to the meaning of the "ceasing to patronize" clause of what is now §20. (See House Rept. No. 627, 63d Cong., 2nd sess., pp. 33-36; Senate Rept. No. 698, 63d Cong., 2nd sess., pp. 29-31; the latter being a reproduction of the former.) But they contain extracts from judicial opinions and a then recent text-book sustaining the "primary boycott," and expressing an adverse view as to the secondary or coercive boycott; and, on the whole, are far from manifesting a purpose to relax the prohibition against restraints of trade in favor of the secondary boycott.

Moreover, the report was supplemented in this regard by the spokesman of the House committee (Mr. Webb) who had the bill in charge when it was under consideration by the House. The question whether the bill legalized the secondary boycott having been raised, it was emphatically and unequivocally answered by him in the negative.[1] The subject—he

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[1] Extracts from Congressional Record, vol. 51, Part 10, 63d Cong., 2d sess.

(Page 9652.)

Mr. Volstead. Would not this also legalize the secondary boycott? • • •

Mr. Webb. Mr. Chairman, I do not think it legalizes a secondary boycott.

declared in substance or effect—was under consideration when the bill was framed, and the section as reported was carefully prepared with the settled purpose of excluding the secondary boycott and confining boycotting to the parties to the dispute, allowing parties to cease to patronize and to ask others to cease to

---

Mr. Volstead. Let me read the lines, if the gentleman will permit. And no such restraining order or injunction shall prohibit anyone——

"from ceasing to patronize **those who** [or to] employ any party to such dispute, or from recommending, advising, or persuading others by peaceful means so to do."

Now, does not the word "others" in that instance refer to others than parties to the dispute?

Mr. Webb. No; because it says in line 15:

"From ceasing to patronize or employ any parties to such dispute."

Mr. Volstead. * * * Can there be any doubt this is intended or does, in fact, legalize the secondary boycott?

Mr. Webb. I will say frankly to my friend when this section was drawn it was drawn with the careful purpose not to legalize the secondary boycott, and we do not think it does. There may be a difference of opinion about it, but it is the opinion of the committee that it does not legalize the secondary boycott and is not intended to do so. It does legalize the primary boycott; it does legalize the strike; it does legalize persuading others to strike, to quit work, and the other acts mentioned in section 18 [now section 20], but we did not intend, I will say frankly, to legalize the secondary boycott.

(Page 9653.)

Mr. Webb. I will say this section was drawn two years or more ago and it was drawn carefully, and those who drew this section drew it with the idea of excluding the secondary boycott. It passed the House, I think, by about 243 to 16, and the question of the secondary boycott was not raised then, because we understood so clearly it did not refer to or authorize the secondary boycott.

patronize a party to the dispute; it was the opinion of the committee that it did not legalize the secondary boycott, it was not their purpose to authorize such a boycott, not a member of the committee would vote to do so; clarifying amendment was unnecessary; the section as reported expressed the real purpose so well that it could not be tortured into a meaning authorizing the secondary boycott. This was the final word of the House committee on the subject, and was uttered under such circumstances and with such impressive emphasis that it is not going too far to say that except for this exposition of the meaning of the section it would not have been enacted in the form in which it was reported. In substantially that form it became law; and since in our opinion its proper construction is entirely in accord with its purpose as thus declared, little need be added.

These views as to the scope of the Clayton Act were again specifically applied by the Supreme Court in *Bed-*

(Page 9658.)

Mr. Webb. Mr. Chairman, I should vote for the amendment offered by the gentleman from Minnesota [Mr. Volstead] if I were not perfectly satisfied that it is taken care of in this section. The language the gentleman reads does not authorize the secondary boycott, and he could not torture it into any such meaning. While it does authorize persons to cease to patronize the party to the dispute and to recommend to others to cease to patronize that same party to the dispute, that is not a secondary boycott, and you can not possibly make it mean a secondary boycott. Therefore this section does not authorize the secondary boycott.

I say again—and I speak for, I believe, practically every member of the Judiciary Committee—that if this section did legalize the secondary boycott there would not be a man vote for it. It is not the purpose of the committee to authorize it, and I do not think any person in this House wants to do it. We confine the boycotting to the parties to the dispute, allowing parties to cease to patronize that party and to ask others to cease to patronize the party to the dispute.

ford Cut Stone Co. v. *Stone Cutters' Assn.*, 274 U.S. 37. These views were likewise applied by the unanimous Supreme Court in *United States* v. *Brims*, 272 U.S. 549, and *Local 167* v. *United States*, 291 U.S. 293. Despite a square challenge of these cases in the Supreme Court by the general counsel for the A.F.of L. in *United States* v. *The Borden Co.*, *supra*, the Supreme Court held that in view of the jurisdictional limitations upon the successful appeal by the Government in that case, that question was not open to argument before it, saying:

> Similarly, the contention of the defendants who are labor officials that the Sherman Act does not apply to labor unions or labor union activities is not open on this appeal. The District Court did not construe the Sherman Act as inapplicable to these defendants and the Government's appeal, under the restriction of the Criminal Appeals Act, does not present that question.

Mr. Justice Frankfurter (*op. cit. supra*) has summed up the results of these debates as follows, and indicated his view that the Clayton Act did not change the interpretation theretofore given to the Sherman Act by the Supreme Court, as follows:

> As originally introduced in the House, the bill for the correction of abuses in issuing labor injunctions carried no exemption of labor organizations from the scope of the antitrust laws. Upon the plea of Samuel Gompers, speaking for organized labor, a provision to this end was reported by the House committee and passed by the House. In the course of the Senate debate upon the bill, an amendment was proposed and adopted in the form of the famous sentence, "The labor of a human being is not a commodity or article of commerce." By President Wilson's signature, these pro-

visions, as Section 6 of the Clayton Act, became law on October 14, 1914. The exact text of this section is important:

> "Sec. 6. That the labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purpose of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws."

This measure brought labor, so it was thought, into the promised land. "Those words, the labor of a human being is not a commodity or article of commerce", Samuel Gompers informed the trade union movement, "are sledge hammer blows to the wrongs and injustices so long inflicted upon the workers. This declaration is the industrial magna charta upon which the working people will rear their construction of industrial freedom." And descending to particulars, Mr. Gompers added, "This declaration removes all possibility of interpreting trust legislation to apply to organizations of the workers, and their legitimate associated activities." Whether this expectation coincided with Congressional intent is meat for endless dialectic. The debates in Congress looked both ways. When the bill was first reported out of the House Judiciary Committee, one of its members, referring specifically to the clause—"Nor shall such organizations • • • be illegal combinations or conspiracies in restraint of trade, under the anti-trust laws,"—said that this "would clearly exempt labor organizations • • •

from the provisions of the anti-trust laws;" that it "would give these organizations what they have desired so long, and all they have been struggling for since the original enactment of the Sherman anti-trust law." Another member of the same committee told the House "We are taking them (labor organizations) out from the ban of the present law to the extent that in future they cannot be dissolved as unlawful combinations. Their existence is made lawful and they are given a legal status." These expressions may serve as a cross section of Congressional opinion. Did the section merely legalize what was already legal, *i. e.*, the mere existence of labor unions, or did it completely immunize labor organizations from prosecution or suit under the Sherman Law? The majority report of the House Committee adopted the innocuous view of the measure. A minority of the same committee suggested that the act would merely prevent suits for the dissolution of labor organizations, but would continue to permit the issue of injunctions under the Sherman Law to restrain them from carrying out their purpose. No less equivocal is the evidence furnished by the debate in the Senate. Senator Pittman was confident that as a result of the new measure the anti-trust laws have "nothing to do with organized labor * * * that any unlawful acts committed in the pursuit of the objects of their organizations shall be tried and determined by other existing laws." To which Senator Cummins replied that "in my view he (Senator Pittman) has stated just what Section 7 (Section 6 of this bill as passed) does not do." A rather large group of Congressmen attacked the legislation as futile if it aimed only at legalization of what was already legal, and vicious if it accomplished the immunization of labor from the anti-trust laws.

This brief history illustrates how fictitious can become the search by courts for the "intent of the legis-

lature" in construing ambiguous enactments. With a legislative history like that which surrounds the Clayton Act, talk about the legislative intent as a means of construing legislation is simply repeating an empty formula. The Supreme Court had to find meaning where Congress had done its best to conceal meaning. In June, 1917, in denying, for the majority of the Court *equitable* relief in a labor case [1] on the two grounds that the Sherman Law only authorized the government and not private suitors to obtain injunctions, and that the Clayton Act, which did grant such authority, came too late to apply to this case, Mr. Justice Holmes expressed the view that even if the Clayton Act were applicable it "establishes a policy inconsistent with the granting of one (an injunction) here." But Mr. Justice Holmes added prophetically, "I do not go into the reasoning that satisfies me, because upon this point I am in the minority." Before very long another case compelled decision on the issue, and the majority of the Court concluded that "there is nothing in the section (6) to exempt such an organization or its members from accountability where it or they depart from its normal and legitimate objects and engage in an actual combination or conspiracy in restraint of trade." [2] The long-drawn-out battle on the national stage, to withdraw labor tactics from the risks of judicial notions concerning "restraint of trade", was fought and lost. (pp. 142-146)

There is one additional consideration which is entitled to great weight in any consideration of legislative intent respecting the Clayton Act. The decision in *Duplex Co.* v. *Deering, supra*, was handed down in 1921 and has been consistently followed since by the Supreme Court. See cases cited *supra*. This interpretation of the statute was the sub-

[1] **Paine Lumber Co. v. Neal**, 244 U.S. 459 (1917).
[2] **Duplex Co. v. Deering**, 254 U.S. 443, 469 (1921).

ject of prolonged public discussion. Despite these circumstances no action has at any time been taken by Congress to amend the statutes so as to provide for an express exemption of the kind defendants argue for. It cannot be said that throughout this period Congress has been indifferent to the welfare of labor or to the interests of labor organizations. It has enacted legislation designed to prevent the abuse of the injunctive process in labor disputes;[1] legislation designed to protect and preserve the right of labor to bargain collectively and the right of labor organizations to be free from employer interference;[2] legislation designed to protect the wages and hours of labor;[3] and legislation designed to provide protection for workers against the hazard of unemployment and of old age.[4]

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[1] Norris-LaGuardia Act of March 23, 1932, c. 90, 47 Stat. 70, U.S.C., Title 29, Sections 101-115.

[2] Wagner Labor Relations Act of July 5, 1935, c. 372, 49 Stat. 449, U.S.C., Title 29, Sections 151 **et seq.**

[3] Fair Labor Standards Act of June 25, 1938, c. 676, 52 Stat. 1060, U.S.C., Title 29, Sections 201-219.

[4] Social Security Act of August 14, 1935, c. 51, 49 Stat. 620, U.S.C., Title 42, Sections 301 **et seq.**

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IN THE

SUPREME COURT OF THE UNITED STATES

No. 638. OCTOBER TERM, 1939.

APEX HOSIERY COMPANY, a Pennsylvania Corporation,
Petitioner,

v.

WILLIAM LEADER and AMERICAN FEDERATION OF FULL FASHIONED HOSIERY WORKERS, Philadelphia Branch No. 1, Local No. 706,
Respondents.

RESPONDENTS' BRIEF CONTRA PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

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INDEX

PAGE

Statement of the Case 1

Argument 7

I. Introductory 7

II. Unless the Local Strike Activities Are Part of a Conspiracy Aimed at Interstate Commerce and Vitalized by an Intent To Monopolize the Supply of the Article Entering and Moving in Interstate Commerce or To Fix the Price of it in Interstate Markets, the Local Strike Activities Are not Within the Reach of the Federal Power under the Sherman Anti-Trust Act 8

(a) Local Activities of Employees on Strike Are not Within the Reach of the Federal Power 8

(b) The Jury Did not, and Indeed Could not, Find the Requisite Intent. The Jury Merely Found an Intent To Conduct a Sit-Down Strike 12

III. The National Labor Relations Act and the Decisions of this Court Upholding its Constitutionality Have not Expanded the Meaning of Commerce, nor Extended the Application of the Anti-Trust Act 17

IV. The Circuit Court Did not Err in Holding that a Substantial Amount of the Commodity

PAGE

Must Be Involved in a Violation of the Anti-Trust Act 23

V. Conclusion 28

CASES CITED

Apex v. Leader, 92 F. (2d.) 155 7

Appalachian Coals, Inc. v. United States, 288 U. S. 344 15, 25

Bedford Cut Stone Co. v. Stone Cutter's Ass'n., 274 U. S. 37 8, 20, 25

Blankenship v. Kurfman, 96 F. (2d.) 450 22

Consolidated Edison Co. v. National Labor Relations Board, 305 U. S. 195 19

Duplex Deering, 254 U. S. 443

First Coronado Coal case, 259 U. S. 344 8, 9, 14, 18, 26, 27

Industrial Association v. United States, 268 U. S. 64 10, 14, 27

Jones & Laughlin Steel Corp. v. National Labor Relations Board, 301 U. S. 1 10, 18

Levering & Garrigues v. Morrin, 289 U. S. 103 7, 8, 19

Local 167 v. United States, 291 U. S. 293 20, 26

Loewe v. Lawler, 208 U. S. 274

National Labor Relations Board v. Fainblatt, 306 U. S. 601 20, 21

O'Brien v. United States, 290 F. 185 27, 28

Santa Cruz Fruit Packing Co. v. National Labor Relations Board, 303 U. S. 453 21, 22

Second Coronado Coal case, 268 U. S. 295 8, 12, 20, 26, 27

Standard Oil Co. v. United States, 221 U. S. 1 24

Standard Oil Co. v. United States, 283 U. S. 163 27

Steers v. United States, 192 F. 1 27, 28

PAGE

Sugar Institute, Inc. v. United States, 297 U. S. 553 . . . 15, 25
United Leather Workers v. Herkert & Meisel, 265 U. S. 457 . . . 8, 9, 12, 18
United States v. Patten, 226 U. S. 525 . . . 25

STATUTES

Act of July 2, 1890, c. 647, 26 Stat. 209, 15 U. S. C. A. Sec. 1 (Sherman Act) . . . 7
Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C. A. Sec. 151 et seq. (National Labor Relations Act) . . . 11
Norris-LaGuardia Act, 29 U. S. C. A. Sec. 101 et seq. . . . 14

IN THE

SUPREME COURT OF THE UNITED STATES

No. 638. October Term, 1939.

APEX HOSIERY COMPANY, a Pennsylvania Corporation,
Petitioner,

v.

WILLIAM LEADER and AMERICAN FEDERATION OF FULL FASHIONED HOSIERY WORKERS, Philadelphia, Branch No. 1, Local No. 706,
Respondents.

RESPONDENTS' BRIEF CONTRA PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

STATEMENT OF THE CASE

The Apex Hosiery Company, a Pennsylvania Corporation, petitioner, brought this civil action in the District Court for the Eastern District of Pennsylvania, against the respondent Union; William Leader, its President; Joseph Burge, its Vice-President; Harry Omeig, its Treasurer; and Huey Brown, its Secretary; claiming to recover losses to

its property and business sustained by reason of a sit-down strike at its plant, from May 6, 1937, until June 23, 1937, when the strikers left the plant, in compliance with an injunction issued by Judge Kirkpatrick, following the decree of the Circuit Court of Appeals. (See: Apex v. Leader, 90 Fed. (2d) 155.) There is no diversity of citizenship in this case. The cause of action is based upon Section 4 of the Clayton Act.

The Apex Hosiery Company has a plant in Philadelphia, in which, during 1937, it employed about 2500 workers (R. 101). The plant produced about 100,000 dozen pairs of women's hosiery per month (R. 102, 107, 1215). The Company shipped about 85% of its production into other states (R. 109). There is no evidence that the Union had knowledge of these facts.

Prior to the sit-down strike, the plant was operated as an open shop (R. 110).

About the middle of April, 1937, Leader sent a letter to Apex, enclosing a form of contract, which provided, inter alia, for the closed shop, more properly referred to as the "all union shop" (R. 120).

On May 6, 1937, union members employed in other mills in the City of Philadelphia, stopped work for the purpose of coming to the Apex Plant (R. 82, 98). However, the plant had closed down at or about 1:00 o'clock p. m., upon orders issued by Meyers, President of the Apex Company (R. 126, 257), and all workers had gone except maintenance and office workers. Beginning about 2:00 p. m. o'clock on May 6, 1937, thousands of people gathered around the mill (R. 126, 216).

Leader was seen on the steps outside of the mill. He requested admission for the purpose of conferring with

Meyers. A conference was refused (R. 127). Leader was heard to declare in a loud voice, "A strike and a sit-down" (R. 128). Immediately thereafter, stones were hurled through the windows, the doors were smashed and the crowd surged into the plant (R. 261); machines, equipment, furniture and merchandise were damaged (R. 128); Meyers, the President, and Struve, the General Superintendent of the plant, as well as other employees were assaulted and injured. The jury found that the Union was not responsible for the violence and damage committed on May 6, 1937 (R. 1365).

Leader was sent for and he came into the mill with a committee of Apex workers, and asked Meyers to sign an agreement (R. 129). Meyers refused to sign the agreement.

From May 6 to June 23, 1937, about 150, or more, Apex employees (R. 265) remained in the plant on a "sit-down" strike (R. 138-139, 242, 264, 325), which was authorized and supported by the Union (R. 1363-1364) for the purpose of obtaining an "all union shop" agreement (R. 305).

On June 21, 1937, the Circuit Court of Appeals reversed the decree of the District Court and ordered Judge Kirkpatrick to issue a sweeping injunction, commanding the sit-downers to evacuate the plant, and restraining the union and its membership from various forms of activity, (Apex v. Leader, 90 Fed. (2d) 155), and on June 23, 1937, the strikers left the plant (R. 139-140).

The jury was told by the learned Trial Judge below that the Circuit Court of Appeals held in its former opinion that there was an intention to restrain commerce and to violate the Sherman Act (R. 140).

During the occupancy of the plant by the sit-downers, none of the officers of the Company were permitted to per-

form their duties in the plant (R. 271). Only watchmen (R. 295) and maintenance men (R. 311) were allowed into the plant (R. 296). The locks on the doors leading into the plant were changed by the sit-down strikers. Machines in the plant were damaged on June 10, 1937 (R. 297-298, 420, 422) and on June 23, 1937 (R. 144, 299, 433, 442). During the period of the sit-down strike, the Company was unable to carry on any operations, and due to the fact that the machines had been damaged, the plant was not able to begin production until August 19, 1937, and full production was not achieved until November 1, 1937 (R. 146).

On May 6, 1937, there was on hand in the plant a total of 130,000 dozen of finished merchandise and merchandise in the greige (undyed and unfinished) (R. 145). There is testimony that counsel for the Company requested Leader to permit them to go into the plant for the sole purpose of removing the finished merchandise, so that it could be shipped against orders, and that Leader refused (R. 619, 620). Leader denied this. There was no evidence that the Union actually authorized the alleged refusal or had knowledge of the request, or the refusal.

Machines were damaged by actual violence (R. 296), and due to lack of use (R. 273).

The petitioner proved damages to plant, equipment, and merchandise which occurred on May 6, 1937, amounting to $26,490.12 (R. 1358), which was not allowed by the jury (R. 1365).

The petitioner proved damage to plant, machinery, and merchandise between May 6 and June 23, 1937. The jury allowed $82,644.59 on this item (R. 1361, 1364).

The petitioner proved overhead expenses in the sum of $122,742.95 (R. 968).

The Company proved that it had earned profits from January 1, 1937 to May 6, 1937, at the rate of $6,111.00 per week (R. 1164, 1358). The Company had operated at a loss during the years 1933, 1934, 1935 and 1936 (R. 1172-1173). A general slump in the market occurred during the last six months of 1937 (R. 1247, 1263). However, more hosiery was sold during 1937 than 1936 (R. 1261). In 1936 the annual national shipments were 37,400,782 dozen pairs. In 1937, the annual national shipments were 39,678,494 dozen pairs of hosiery (R. 1261). The productive capacity of all the full fashioned hosiery mills in the United States was 8,000,000 or 10,000,000 dozen pairs *more* than the sales (R. 1233-1234). There was no change in prices (R. 1195-1196).

At the conclusion of the petitioner's case, the respondents moved that the case be dismissed, which motion was denied (R. 628). At the conclusion of the entire case, the respondents filed a motion for a directed verdict for the defendants, in accordance with Rule 50 (b) of the New Rules of Federal Practice, which motion was denied (R. 1305, 1348).

The jury was given a list of questions propounded by the learned Trial Judge in the nature of special findings of fact (R. 1354-1357, 1363, 1367).

The jury returned a verdict for the petitioner and against the respondents. As to the defendants Joseph Burge, Vice-President; Harry Omeig, Treasurer; and Huey Brown, Secretary of the Union, the jury found for the defendants and against the plaintiff (R. 1361). A motion was made that the verdict be trebled, and this was done (R. 1363). A judgment was entered on the trebled verdict in the sum of $711,932.55, together with counsel fees in the sum of

$25,000.00, allowed by the Court, and costs to be taxed (R. 1368).

The respondents filed a motion to set aside the verdict and judgment against them (R. 1369) and also a motion and reasons for new trial (R. 1370-1388). The learned Trial Judge below dismissed the motions and his opinion appears at R. 1389-1391.

On appeal the Circuit Court of Appeals, in an opinion filed Nov. 29, 1939. (R. 1399-1417) reversed the judgment and remanded with instructions to enter judgment for the respondents herein.

The petitioner filed a petition for rehearing (R. 1421-1436) and same was denied on Dec. 27, 1939 (R. 1437).

ARGUMENT

I. Introductory.

The facts in this case clearly establish that the activities of the employees were purely local and therefore beyond the orbit of the federal power; and further, apart from the question of federal jurisdiction, that they do not constitute a conspiracy *in restraint of interstate commerce.*

It is really not necessary to consider the second portion of the foregoing statement in order to dispose of this case. If the facts alleged to support the claim of federal jurisdiction are legally insufficient, then the action should not be entertained: *Levering v. Morrin*, 289 U. S. 103. The only reason the lower court did proceed to trial is that it was of the erroneous opinion that it was bound by the former decision of the Circuit Court of Appeals. Were it not for this, the case would have been dismissed by the learned trial judge. This is clear from his opinion in which he referred to the decision of the Circuit Court in *Apex v. Leader*, 92 F. 2nd 155 and said:

> "its decision can only mean that, as a matter of law, the requisite intent is conclusively presumed from the seizure of the plant by the defendants and the consequent stopping of production and shipment of goods." (R. 1389-1390).

Because this case turns on the lack of jurisdiction, we will not in this brief enter into a full analysis of the Sherman Anti-Trust Act (Act of 1890, c. 647, 26 Stat. 209, 15 U. S. C. A. Sec. 1), its purpose, its legislative origin, and the decisions of this Court, to show that the Anti-Trust

Acts have been erroneously applied to labor disputes (se
"*The Sherman Act and Labor Disputes*" by Louis B. Bou
din in Columbia Law Review, December 1939 and Januar
1940), and that due to the recent labor legislation, the Anti
Trust Act either cannot be applied to labor disputes or a
least should not be applied to activities similar to thos
present in the case of *Lowe v. Lawlor*, 208 U. S. 274; *Se con
Coronado Coal Case*, 268 U. S. 295; *Duplex v. Deering*, 25
U. S. 443; and *Bedford Stone Cutters Case*, 274 U. S. 3
No doubt a proper case will soon be brought to this Cou
which will permit a re-examination of the entire problem
But it is respectfully suggested that the facts in this cas
do not permit or necessitate that task. This case was prop
erly decided by Circuit Court as one within those decision
by this Court holding that a local strike does not com
within the federal power nor violate the Anti-Trust Act.

II. Unless the Local Strike Activities Are Part of
Conspiracy Aimed at Interstate Commerce and Vitalize
by an Intent To Monopolize the Supply of the Articl
Entering and Moving in Interstate Commerce or To F
the Price of it in Interstate Markets, the Local Strik
Activities Are not Within the Reach of the Federa
Power under the Sherman Anti-Trust Act.

(a) *Local Activities of Employees on Strike Are n
Within the Reach of the Federal Power.*

The facts of this case establish that there occurred a si
down strike in the petitioner's mill. The case is square
within the decisions of this Court in the *First Coronad
Coal Case*, 259 U. S. 344; *United Leather Workers v. H
kert & Meisel*, 265 U. S. 457; and *Levering & Garrigues
Morrin*, 289 U. S. 103.

In the *First Coronado Coal Case* this Court held that mining was not interstate commerce, that the power of Congress did not extend to its regulation as such and that the activities there involved—a local strike—did not bring them within the broad provisions of the Anti-Trust Act. Chief Justice Taft found that the strike there involved was

> "local in its origin and motive, local in its waging, and local in its felonious and murderous ending." (p. 412)

In *United Leather Workers v. Herkert & Meisel*, 265 U. S. 457, the Court rejected a claim that the strike there involved and carried on through illegal picketing and intimidation of workers was in violation of the Anti-Trust Act, despite the fact that 90% of the output of the plant was normally shipped in interstate commerce and pointed out that the natural, logical and inevitable consequences of the contention there made (similar to that of the petitioner here)

> "will be that every strike in any industry or even in any single factory will be within the Sherman Act and subject to federal jurisdiction, provided any appreciable amount of its product enters into interstate commerce * * * We cannot think that Congress intended any such result in the enactment of the Anti-Trust Act, or that the decisions of this Court warrant such construction."

This Court held in that case, at p. 471, that there was no such intent as is required to make out a violation of the Anti-Trust Act nor were the necessary effects upon interstate commerce such as

> "to enable those preventing the manufacture to

monopolize supply, control its price, or to discriminate as between would-be purchasers."

The Court held further, p. 471, that

> "the mere reduction in the supply of an article to be shipped in interstate commerce by *illegal or tortious prevention of its manufacture* is ordinarily an indirect and remote obstruction to that commerce." (Italics ours).

See also *Levering & Garrigues v. Morrin*, 289 U. S. 103 and *Industrial Association v. United States*, 268 U. S. 64.

In *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, this Court reviewed the labor cases which involved the Anti-Trust Act, to show the breadth of the federal power under the commerce clause and the conditions under which the federal power had been exercised with relation to the activities of employees engaged in production, and in this connection, said:

> "Upon the same principle, the Anti-Trust Act has been applied to the conduct of employees engaged in production. *Loewe v. Lawlor*, 208 U. S. 274; *Coronado Coal Co. v. United Mine Workers, supra; Bedford Cut Stone Co. v. Stonecutters Association*, 274 U. S. 37. See, also *Local 167 v. United States*, 291 U. S. 293, 297; *Schechter Corporation v. United States, supra.* The decisions dealing with the question of that application illustrate both the principle and its limitation. Thus in the *First Coronado Case*, the Court held that mining was not interstate commerce, that the power of Congress did not extend to its regulation as such, and that it had not been shown that the activities there involved—a local strike—brought them within the provisions of the Anti-Trust Act, notwithstanding the

broad terms of that statute. A similar conclusion was reached in *United Leather Workers v. Herkert, supra, Industrial Association v. United States, supra,* and *Levering & Garrigues Co. v. Morrin,* 289 U. S. 103, 107. But in the *First Coronado Case,* the Court also said that 'if Congress deems certain recurring practices, though not really part of interstate commerce, likely to obstruct, restrain or burden it, it has the power to subject them to national supervision and restraint.' 259 U. S. p. 408. And in the *Second Coronado Case* the Court ruled that while the mere reduction in the supply of an article to be shipped in interstate commerce by the illegal or tortious prevention of its manufacture or production is ordinarily an indirect and remote obstruction to that commerce, nevertheless when the 'intent of those unlawfully preventing the manufacture or production is shown to be to restrain or control the supply entering and moving in interstate commerce, or the price of it in interstate markets, their action is a direct violation of the Anti-Trust Act.' 268 U. S. p. 310. And the existence of that intent may be a necessary inference from proof of the direct and substantial effect produced by the employees' conduct. *Industrial Association v. United States,* 268 U. S. p. 81. What was absent from the evidence in the *First Coronado Case* appeared in the *Second* and the Act was accordingly applied to the mining employees." (Italics ours)

This Court referred to those cases where the Anti-Trust t had been applied merely to show that the federal power l been deemed broad enough to include local activities, only when they were part of a conspiracy with intent restrain or control the supply or to fix prices in inter- te markets.

In the *Second Coronado Coal Case*, 268 U. S. 295, this Court held that the additional evidence produced in the second trial showed an intent "to restrain and control the supply of coal moving in interstate commerce," and applied the Anti-Trust Act to the conspirators. *It was the suppression of competition in the interstate markets for the purpose of maintaining prices which constituted the conspiracy in restraint of commerce and not the violent strike activities which brought the Anti-Trust Act into play in that case.*

In the case at bar the requisite intent was neither alleged nor proved. There was nothing more than concerted action to unionize the mill by means of a sit-down strike with the intent and purpose of preventing the petitioner from carrying on its business. As this Court said in the *Herkert case*:

> "It is true that they were, in this labor controversy, hoping that the loss of business in selling goods would furnish a motive to the complainant to yield to demands in respect to the terms of employment."

It is respectfully submitted that the facts in this case do not make out a violation of the Sherman Anti-Trust Act and therefore the district court had no jurisdiction.

(b) The Jury Did not and Indeed Could not Find the Requisite Intent. The Jury Found an Intent To Conduct a Sit-down Strike.

The Circuit Court of Appeals in reversing the judgment entered in the District Court committed no error. Sufficient has been said herein to show that there was no conspiracy with intent to monopolize the supply of hosiery entering and moving in interstate commerce or to fix the price of it in the interstate markets. The case was presented to the jury on the erroneous theory that the intent to conduct

a sit-down strike in a mill which normally receives raw materials from outside the state and ships 85% of its merchandise into other states raises a conclusive presumption of intent "to restrain commerce". No proof was adduced of a conspiracy with intent to unduly restrict competition in interstate hosiery markets by monopoly of supply or by price fixing, nor were the consequences of the sit-down strike such as to compel an inference of such intent.

The Apex Hosiery Company produced about 100,000 dozen pairs of hosiery per month, in an industry which had a total national sale in the year 1937 of approximately forty million dozen pairs of hosiery, and which industry had at that time a productive capacity of about forty-eight million dozen pairs. The stoppage of production at Apex for the period of the sit-down strike had no effect whatsoever upon competitive opportunities in the hosiery markets, or the prices of hosiery in interstate markets, nor was the available supply of hosiery curtailed whatsoever. As a matter of fact, more hosiery was sold during 1937 than during 1936. (R. 1261).

It is plain therefore that "the combination was not such that by reason of the intent of the conspirators or the inherent nature of their acts, public interest was prejudiced by unduly restricting competition or obstructing trade. Appalachian Coals, Inc., supra. Nash v. United States, supra." (R. 1413, Opinion of Circuit Court).

The petitioner contends however that the refusal by the respondent Leader to permit entry into the mill for the purpose of removing hosiery so that it could be shipped against orders constitutes the crucial fact of sufficient substance to turn the entire case into a conspiracy "in restraint of commerce".

Although the petitioner, on page 11 of its argument in

support of its petition, states that the union respondent repeatedly refused to grant the petitioner's request for permission to remove and ship $800,000 of *finished merchandise* from its factory, the record does not support that statement. The record shows that there was on hand in the plant on May 6, 1937, the date of the beginning of the strike, a total of 13,000 dozen of *finished and unfinished* merchandise (R. 145). *There is no evidence of how much of this was finished.* Furthermore, the respondent Leader, not the union, uttered the refusal (R. 620). There is no evidence that the union actually authorized the alleged statement of refusal or ratified Leader's alleged refusal, or that it had actual knowledge of it. (Section 6 of Norris LaGuardia Act, 29 U. S. C. A., Sec. 101)

However, it is clear that this is not a violation of the Anti-Trust Act.

In the *First Coronado Coal Case*, the following appears at p. 411:

> "The circumstances that a car loaded with coal and billed to a town in Louisiana was burned by the conspirators has no significance upon this head. The car had been used in the battle by some of Bache's men for defense. It offered protection and its burning was only a part of the general destruction."

See also *Industrial Association of San Francisco v. United States*, 268 U. S. 64, referred to in the opinion of the Circuit Court below at R. 1414.

If it is not a violation to engage in unlawful picketing to prevent the normal operations of a factory which customarily ships 85% of its product into other states, and if it is not a violation to burn a "car loaded with coal and billed

to a town in Louisiana", then surely the refusal by Leader does not constitute a violation. Particularly is this true when we consider that here the goods were not even in transit. It cannot be said that this refusal by Leader prejudiced the public interests by unduly restricting competition or unduly obstructing the course of trade; *Sugar Institute, Inc. v. United States*, 297 U. S. 553; *Appalachian Coals, Inc. v. United States*, 288 U. S. 344.

Moreover, the damages the petitioners sought to recover did not result from this refusal. The petitioner sought to recover damages for injury to its property, loss of overhead charges and estimated profits it claimed it would have earned had it operated its plant. It did not prove any loss resulting from the refusal.

Returning to the petitioner's contention that the Circuit Court erred in reversing because the jury found intent and such finding is amply supported by the evidence. It is abundantly clear that the evidence supports no finding of the requisite intent. And it is equally true that *the jury made no such finding.* The following is ample proof of this unequivocal statement:

(a) The case was tried upon the erroneous theory propounded by the petitioner and adopted by the Circuit Court in its opinion reported in 90 F. (2d) 155, that a sit-down strike raises a conclusive presumption of an intent to restrain commerce.

(b) The learned Trial Judge refused to charge the jury in accordance with the defendants points for charge as to the meaning of "restraint of commerce" as that term has been interpreted by the Supreme Court. (R. 1341, 1350)

(c) The special findings of the jury do not contain a question of that nature.

(d) The learned Trial Judge submitted the question of intent to conduct a sit-down strike and the jury found that the Union defendant did intend that kind of a strike. (R. 1363)

(e) Even if the court had submitted the question of intent under proper explanatory instructions to the jury, there is no evidence to support a finding of the specific intent required under the Second Coronado Coal case.

(f) In his charge to the jury, the learned Trial Judge said:

> "The facts involved in this case have been ruled upon by the Circuit Court of Appeals in that regard, and the law as declared by the Circuit Court of Appeals requires me to say to you that if you find the defendants did the things which they are charged with doing, then, without further proof of their intent, you may find from those facts that the defendants did intend to restrain interstate commerce." (R. 1314-1315)

The learned trial judge made this point clear in his opinion denying the motion to set aside the judgment: See R. 1389-1390 hereinabove quoted in the Introductory statement to this brief.

That the theory of the petitioner's case is that a sit-down strike raises a conclusive presumption of intent to "restrain" commerce in the manner prohibited by the Anti-Trust Act is further confirmed by its argument that the Na-

tional Labor Relations Act cases sustain such a legal conclusion.

It is respectfully submitted, therefore, that the Circuit Court of Appeals did not invade the province of the jury, but performed an essential judicial function in reversing the judgment entered on the verdict.

III. The National Labor Relations Act and the Decisions of this Court Upholding its Constitutionality Have not Expanded the Meaning of "Commerce" nor Extended the Application of the Anti-Trust Act.

The second point advanced by the petitioner (pp. 14-17 of petition) proceeds on the assumption that by holding the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C. A., Sec. 151 et seq.) constitutional and applicable to activities in manufacturing plants, the federal power has been enlarged, the meaning of "in restraint of commerce" changed, and the application of the Anti-Trust Act expanded, so that now if unfair labor practices in a plant such as Friedman-Harry Marks Clothing Co. or Fainblatt are within the federal power, because they "led or tend to lead to a labor dispute burdening or obstructing commerce", then a strike which actually stops production and the flow of goods into and out of the plant must necessarily be within the federal power under the Sherman Act.

The fallacies which infect this contention are many. In the first place the problems involved in a determination of the *constitutionality* of an Act of Congress are different from the problems involved in a determination of the *application* of an Act of Congress.

Although Congress is constitutionally empowered to protect commerce from recurrent local practices which affect commerce directly, it is not incumbent upon Congress to reach all the evils within its field of action. The National Labor Relations Act cases merely affirmed the constitutionality of that Act upon a well established principle clearly set forth in many cases.

In the *First Coronado Case*, *supra*, the court in denying that the Anti-Trust Act could be applied to a local strike said at p. 408

> "if Congress deems certain recurring practices, though not really part of interstate commerce, likely to obstruct, restrain or burden it, it has the power to subject them to national supervision and restraint."

In the very case relied on by the petitioner, namely *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, 39, 40, the court reiterated the principle upon which Congress could constitutionally deal with local activities. (See excerpt therefrom, supra.)

The same argument now advanced by the petitioner in this case was rejected by this Court in the *Herkert case*, *supra*, as follows:

> "The cases of *Stafford v. Wallace*, 258 U. S. 495 and *Chicago Board of Trade v. Olsen*, 262 U. S. 1, are also supposed in some way to sustain the view that a strike against the manufacture of commodities intended to be shipped in interstate commerce, is a conspiracy against that commerce. What those cases decided was that when Congress found from investigation that more or less constant abusive practices in a course of business usually within state police cognizance, threaten to ob-

struct or unduly to burden the freedom of interstate commerce, it could by law institute supervision of such course of business in order to prevent the abuses having such effect. As said in *Stafford v. Wallace* (p. 520): 'The *reasonable fear by Congress* that such acts, usually lawful and affecting only intrastate commerce when considered alone, will probably, and more or less constantly, be used in conspiracies against interstate commerce, or constitute a direct or undue burden on it, expressed in this remedial legislation, *serves the same purpose as the intent* charged in the *Swift* indictment, to bring acts of a similar character into the current of interstate commerce for federal restraint.'" (Italics supplied)

The crucial words in the National Labor Relations Act are "affect commerce".

"Congress did not attempt to deal with particular instances. It created for that purpose the National Labor Relations Board. In conferring authority upon that Board, Congress had regard to the limitations of the Constitutional grant of Federal power. Thus, the 'commerce' contemplated by the Act * * * is interstate and foreign commerce. The unfair labor practices which the Act purports to reach are those *affecting that* commerce * * * And whether or not a particular action in the conduct of intrastate enterprises does affect that commerce in such a close and intimate fashion as to be subject to Federal control is left to be determined as individual cases arise."

Consolidated Edison Co. v. NLRB, 305 U. S. 195.

The question in the Consolidated Edison Case was really

whether the Board had exceeded the limits of Federal power, that is—whether the employer and its employees were within such relation to interstate commerce that an unfair labor practice in that plant would "affect commerce."

The principle was made even more explicit in *National Labor Relations Board v. Fainblatt*, 306 U. S. 601. In that case, the Court held:

> "The power of Congress extends to the protection of interstate commerce from interference or injury due to activities which are wholly intrastate."

The point at issue in that case was whether or not, in view of the small size of the employer's business, the Federal power could be extended over it. The Court pointed out in Note No. 1 that the power of Congress, whether exerted under the Wagner Act or any other Act, extends to those intrastate activities which, if permitted, would result in restraint of interstate commerce. As an illustration of the extent of Federal power, the Court cited the *Second Coronado Coal Case*, the *Stone Cutters Case*, and *Local No. 167*. These cases were cited merely to illustrate that the Federal power under the Sherman Act, may extend to activities which are wholly and purely intrastate.

The Court did not mean, and no such meaning can be extracted from these latter Labor Board Decisions, that the meaning and application of the Sherman Act has been altered.

In the Labor Board cases, since the statute leaves to the Board, subject to judicial review, the question of jurisdiction, the test of the application of the Act to a particular employer is the existence "of a relationship of the em-

ployer and his empolyees to the commerce, such that, to paraphrase Section 10 (a) in the light of constitutional limitations, unfair labor practices have led or tend to lead 'to a labor dispute burdening or obstructing commerce.' " *N. L. R. B. v. Fainblatt,* (supra).

> "It is a familiar principle that acts which directly burden or obstruct interstate or foreign commerce, or its free flow are within the reach of the governmental power * * * Whether or not particular action does affect commerce in such a close and intimate fashion, as to be subject to Federal control and hence lie within the authority conferred upon the Board, is left by the statute to be determined as individual cases arise. *We are thus to inquire whether in the instant case, the Constitutional boundary has been passed.*" (Italics ours) *Jones & Laughlin Case,* 301 U. S. 1.

The same problem concerned the Court in the *Santa Cruz Case,* 303 U. S. 453. The Employer in that case contended that in view of the nature of its business, it did not lie within the field of Federal power. In answer to that contention, the Court said:

> "The *power of Congress* extends not only to the making of rules governing sales of petitioners produced in interstate commerce, as for example with respect to misbranding under the Federal Foods and Drug Act, or with respect to forbidden discrimination in price under the Clayton Act, but also to the *protection of that interstate commerce from burdens, obstructions and interruptions, whatever may be their source.* Second Employers' Liability Cases, 223 U. S. 1, 51. The close and intimate effect which brings the subject within the reach of Federal power may be due to activi-

ties in relation to productive industry, although that industry, when separately viewed, is local. It is upon this *well established principle* that the constitutional validity of the National Labor Relations Act has been sustained. NLRB v. Jones & Laughlin, 301 U. S. 1, 38." (Italics ours)

Santa Cruz Fruit Packing Co. v. NLRB, 303 U. S. 453.

It is too clear for further argument that whereas the Sherman Act is directed at conspiracies or combinations which impair the freedom of competition in interstate markets and whereas local activities come within the federal power under that Act only when they form part of a plan involving monopoly of supply or price fixing, the National Labor Relations Act is aimed at local activities which *affect commerce*.

Activities which directly and substantially "restrain" commerce under the Anti Trust laws are different in nature from unfair labor practices which "affect commerce" under the National Labor Relations Act.

In *Blankenship v. Kurfman*, 96 F. (2d) 450, CCA 7th, a similar argument was disposed of by the Court as follows:

> "The recent decisions in cases under the National Labor Relations Act are instructive for the purpose of determining whether certain activities *affect commerce*. These cases do not involve problems of determining the existence of a conspiracy or combination *in restraint of commerce*." (Italics ours).

The term "in restraint of commerce" is a term of art well known in the law for generations before the Anti-Trust Act was passed. It's nature has been made reason-

ly clear in the decisions by this court and the activities hich constitute a conspiracy "in restraint of commerce" e qualitatively different from activities which merely ffect commerce".

If the contention of the petitioner is legally correct, en section 13 of the National Labor Relations Act has en rendered meaningless. Section 13 of the National abor Relations Act specifically provides;

"Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike."

his section appears in the Act, despite the finding in ection 1 that strikes materially affect, restrain, and con- ol the flow of goods in the channels of commerce.

In conclusion on this point, it is respectfully submitted at the Circuit Court of Appeals, was entirely correct in s conclusion that the effect on interstate commerce in e case at bar was indirect and remote and in refusing to tablish an equivalence between the terms "in restraint commerce" and "affect commerce".

. The Circuit Court Did not Err in Holding that Substantial Amount of the Commodity Must Be Involved in a Violation of the Anti-Trust Act.

It is respectfully submitted that the Circuit Court did t err in reversing the judgment on the ground that ere was no federal jurisdiction over the local strike rely because the Court went further and showed that ere can be no violation of the Sherman Act unless the lume of commerce involved is substantial. If a substan- l amount is not involved there can be no monopoly of pply or price fixing.

The petitioner seeks to draw a distinction between a violation of Section 1 and Section 2 of the Sherman Act and implies that the amount of the commodity involved may be significant in a monopoly case under Section 2 but that it is irrelevant in a case arising under Section 1. But the statute cannot be thus divided, and no such distinction has been made by this Court.

In *Standard Oil Company v. United States*, 221 U. S. 1, the Court said:

> "There can be no doubt that the sole subject with which the first section deals is restraint of trade as *therein contemplated*, and that the attempt to monopolize and monopolization is the subject with which the second section is concerned. It is certain that those terms, at least in their rudimentary meaning took their origin in the common law, and were also familiar in the law of this country prior to and at the time of the adoption of the Act in question. * * * (p. 57) It came moreover to pass that *contracts or acts* which it was considered had a monopolistic tendency, especially those which were thought to unduly diminish competition and hence to enhance price—*in other words to monopolize*—came also in a generic sense to be spoken of and treated as they had been in England, as restricting the due course of trade and therefore as being in *restraint of trade*." (Italics supplied)

And further

> "Having by the first section forbidden all means of *monopolizing trade, that is unduly restraining it*, by means of every contract, *combination, etc.*, the second section seeks, if possible, to make the prohibition of the Act all the more complete and perfect by embracing all attempts to reach the end prohibited by

the first section, that is restraints of trade, by any attempts to monopolize or monopolization thereof, even although the acts by which such results are attempted to be brought about or are brought about, be not embraced *within the general enumeration of the first section.* And, of course, when the *second section is thus harmonized with and made, as it was intended to be, the complement of the first,* * * *" (Italics supplied).

That this Court has always considered the amount of the commodity involved in all cases involving the Anti-Trust Act, is clear from the following cases.

In the *Appalachian Coals Case, supra,* although the combination controlled 74% of the production in the Appalachian area, it represented but 12% of the coal entering into the interstate market east of the Mississippi. Since "*ample competitive opportunities*" remained the combination was held not to be in violation of the Anti-Trust Act.

In *United States v. Patten,* 226 U. S. 525, the conspiracy was to obtain control of the total available cotton supply and to enhance the price to all buyers in every market in the country.

In the *Sugar Institute Case, supra,* the refiners, represented in the Institute, which was held in violation of the Anti-Trust Act, refined practically all the imported sugar and supplied 70% to 80% of all the sugar consumed in the United States and the combination was condemned because of the "steps taken to secure adherence without deviation to prices and terms announced."

In *Bedford Cut Stone Co. v. Stone Cutters Ass'n,* 274 U. S. 37 there was a secondary boycott but the Court, in

holding that it was a conspiracy aimed directly at interstate commerce said:

> "the present combination deliberately adopted a course of conduct which directly and substantially curtailed or threatened thus to curtail the natural flow in interstate commerce of a *very large proportion of the building limestone production of the entire country* to the gravely probable disadvantage of producers, purchasers and the public; and it must be held to be a combination in undue and unreasonable restraint of such commerce within the meaning of the Anti-Trust Act as interpreted by this court." (Italics ours.)

In the *Second Coronado Coal Case, supra*, not only was the requisite intent present but the Court found that the amount of coal involved was substantial. (In the *First Coronado Case* the evidence showed that the mines which were destroyed produced about 5000 tons per week, but in the *Second Coronado Case* that figure was corrected to show that it was 5000 tons per day.)

In *Local 167 v. U. S., 291 U. S.* 293, the conspiracy *dominated the entire industry* and even cooperated toward the furtherance of the monopolistic control and sale of chicken coops at fixed prices.

> "The interference by appellants and others with the unloading, the transportation, the sales by marketmen to retailers, the prices charged and the amount of profits exacted operates *substantially and directly to restrain* and burden the untrammelled shipment and movement of the poultry while unquestionably it is in interstate commerce * * * *The conspiracy was not for a temporary purpose but to dominate a great and permanent business.* It was highly organized and main-

tained by the levy, collection and expenditure of enormous sums * * *. The evidence shows that delegates of the union coerced marketmen to use coops of a company that had or sought to secure a monopoly of such facilities and charged excessive rentals for them." (Italics ours.)

In *Industrial Ass'n of San Francisco v. United States*, *supra*, the Court applied the maxim "de minimus non curat lex".

In *Standard Oil Co. v. United States*, 283 U. S. 163, 169, the Court said:

> "Thus appears that no monopoly of any kind, or restraint of interstate commerce, has been effected either by means of the contracts or in some other way. In the absence of proof that the primary defendants had such control of the entire industry as would make effective the alleged domination of a part, *it is difficult to see how they could by agreeing upon royalty rates control either the price or the supply of the gasoline, or otherwise restrain competition.*" (Italics supplied)

It is therefore established by this court that the amount of the commodity involved is important in any case wherein it is charged that the Anti-Trust Act has been violated. A comparison of the *First Coronado Coal Case*, *supra*, with the *Second Coronado Coal Case*, *supra*, shows conclusively that the amount of the coal involved was deemed of importance by this court.

The petitioner relies upon *Steers v. United States*, 192 F. 1, (1911) and *O'Brien v. United States*, 290 F. 185, (1923), as support for its contention that the amount of the commodity involved is immaterial. The *Steers Case* involved a conspiracy or combination to control the tobacco

supply in the area for the purpose of fixing its price and the interference with the shipment of the four hogsheads of tobacco was merely the overt act which illuminated the conspiracy. The *O'Brien Case* relied upon the *Steers Case* and was decided by the same Circuit Court of Appeals, despite the fact that the cases were entirely different. Nevertheless, the interference in the *O'Brien Case* was with an actual shipment of goods in interstate commerce. The case is therefore, not in point with the case at bar. Furthermore it is respectfully submitted that the *O'Brien Case* is in direct conflict with the decisions of this Court, whereas, the decision of the Circuit Court in the case at bar is consistent with the decisions of this court. The *O'Brien Case* was properly distinguished from the case at bar by the Third Circuit Court of Appeals. It was decided in 1923 and before the various decisions by this court defining the elements of a violation of the Anti-Trust Act.

V. Conclusion.

In conclusion it is respectfully submitted that the Circuit Court of Appeals below committed no error since:

(1) The strike was purely local and its effect on interstate commerce was merely indirect, incidental and remote. Consequently the district court had no jurisdiction.

(2) The National Labor Relations Act and the decisions by this court sustaining its constitutionality and application have not enlarged the meaning of "interstate commerce," nor changed the meaning of "in restraint of commerce".

(3) The jury did not, and indeed could not, find an intent to control or monopolize the supply of hosiery

entering and moving in interstate commerce nor an intent to fix the price of it in interstate markets.

(4) The object of the respondents was to unionize the plant.

(5) The Circuit Court of Appeals properly reversed its former decision because it was clearly and palpably erroneous.

(6) The decision rendered by the Circuit Court is consonant with all of the decisions of this court.

(7) The questions presented by the petitioner have already been decided by this court.

Wherefore it is respectfully submitted that the petition for writ of certiorari should be dismissed.

Respectfully submitted,

ISADORE KATZ,
Attorney for Respondents.

J. NYDICK,
Of Counsel.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 638

APEX HOSIERY COMPANY, a Pennsylvania Corporation,
Petitioner,

vs.

WILLIAM LEADER and AMERICAN FEDERATION OF FULL FASHIONED HOSIERY WORKERS, PHILADELPHIA, BRANCH NO. 1, LOCAL NO. 706,
Respondents.

BRIEF FOR RESPONDENTS

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INDEX

		PAGE
I.	Opinions below	1
II.	Jurisdiction	2
III.	Statement of the Case	2
IV.	Summary of Argument	7
V.	Argument	12
	A. The Sherman Anti-Trust Act Does Not Apply to Labor Unions	12
	1. The Terms "Contract in Restraint of Trade" and "Combination or Conspiracy in Restraint of Trade" Must Be Given their Common Law Meaning, Otherwise the Entire Sherman Act Is Unconstitutional and Void	14
	2. At Common Law the Terms "Contract in Restraint of Trade" and "Combinations or Conspiracies in Restraint of Trade" Did not Apply to Labor Unions in their Relations with Employers	20
	(a) The Public Policy Underlying the Inhibitions against Restraints of Trade at Common Law	25
	3. The Congressional Debates Establish Decisively that the Legislature Intended To Exclude Labor Unions from the Purview of the Act	26
	(a) The Debate in the Senate on the Bill as Reported by the Committee on Finance	27

PAGE

(b) The Debate in the Senate on the Bill Reported out by the Committee on the Judiciary 34

4. Labor Unions in their Relations with Employers Were not within that Field of Common Law which Dealt with Combinations in Restraint of Trade 40

5. To Obviate the Judicial Construction of the Sherman Act in Loewe v. Lawlor, Congress Enacted Section 6 and Section 20 of the Clayton Act 49

B. Even if the Sherman Act Is Applicable to Labor Unions and their Activities, that Act Has not Been Violated by the Respondents, because the Local Strike Activities Were Not Part of a Conspiracy Directly Aimed at Interstate Commerce, nor Vitalized by an Intent To Monopolize the Supply of the Article Entering and Moving in Interstate Commerce or To Fix the Price of it in Interstate Markets 54

1. Local Activities of Employees on Strike Are not within the Reach of the Federal Power 55

2. The Jury Did not and Indeed Could not Find the Requisite Intent. The Jury Found an Intent To Conduct a Sit-down Strike 60

(a) The Economic Relation between the Sherman Act and the Wagner Act 66

C. The National Labor Relations Act and the Decisions of the Court Upholding its Constitutionality Have not Expanded the Meaning of "Commerce" nor Extended the Application of the Anti-Trust Act 71

PAGE

D. The Circuit Court Did not Err in Holding that a Substantial Amount of the Commodity Must Be Involved in a Violation of the Anti-Trust Act 79

E. Application of the Sherman Act Does not Depend upon the Illegality of the Means 83

F. Conclusion 84

CITATIONS

ses:

dyston Pipe and Steel Co. v. United States, 85 F. 271 23, 25 41, 45, 46

er v. Thatcher, 19 Pick. 51 25

erican Federation of Labor v. National Labor Relations Board, —U. S.— 68

erican Steel Foundaries v. Tri-City Central Trades Council, 257 U. S. 184 69

ex v. Leader, 90 F. (2d) 155 2, 4, 65

x v. Leader, 108 F. (2d) 71 1

palachian Coals, Inc. v. United States, 288 U. S. 344 61, 62, 79

ntic Cleaners & Dyers, Inc. v. United States, 286 U. S. 427 26, 78

ford Cut Stone Co. v. Journeymen Stonecutters Association, 274 U. S. 37 48, 53, 55, 80, 83

kenship v. Kurfman, 96 F. (2d) 450 76

v. Frink Dairy Co., 274 U. S. 445 7, 16, 23, 52, 53

monwealth v. Hunt, 45 Mass. 111 41

olidated Edison Co. v. National Labor Relations Board, 305 U. S. 195 43

nado Coal Co. v. United Mine Workers, 259 U. S. 44 55, 59, 62, 65, 66, 69, 71, 74, 83

PAGE

Debs, In Re. 64 F. 724; 158 U. S. 564 18
Duplex Printing Press Co. v. Deering, 254 U. S. 443 12, 48, 51, 52, 55, 83
Erie Railroad Co. v. Tompkins, 304 U. S. 64 13
Farrer v. Close, L. R. 4 Q. B. 602 42, 45, 46, 47
Glenn Coal Co. v. Dickenson Fuel Co., 72 F. (2d) 885 81
Hilton v. Eckersley, 6 El. & Bl. 47, 66 42, 45
Hopkins v. U. S., 171 U. S. 578 19
Hornby v. Close, L. R. 2 Q. B. 153 42, 43, 45
Horner v. Graves, 7 Bing. 735, 131 Eng. Repr. 284 24
Industrial Association v. United States, 268 U. S. 64 56, 62
King v. Journeymen's Tailors of Cambridge, 8 Modern 11 42
King v. Sterling, 1 Lev. 125; 1 Sid. 274; 1 Keb. 350 42
Lanzetta v. New Jersey, 306 U. S. 451 52
Lauf v. Shinner, 303 U. S. 323 52
Leader v. Apex, 302 U. S. 656 2
Levering and Garrigues v. Morrin, 289 U. S. 103 55, 56
Local 167 v. United States, 291 U. S. 293 80
Loewe v. Lawlor, 208 U. S. 274 8, 9, 13, 15, 17, 27, 40, 41, 48, 52, 54
Loewe v. Lawlor, 235 U. S. 522 54, 79, 80, 83
Master Stevedores' Association v. Walsh, 2 Daly 1 42
Mitchel v. Reynolds, 1 P. Wms. 181; 24 Eng. Repr. 347 25
Nash v. United States, 229 U. S. 373 61, 64
National Labor Relations Board v. Fainblatt, 306 U. S. 601 74
National Labor Relations Board v. Friedman-Harry Marks Co., 301 U. S. 58 71
National Labor Relations Board v. Jones & Laughlin Steel Corp., 301 U. S. 1 15, 57, 72, 73, 75, 76, 77

PAGE

New Negro Alliance v. Sanitary Grocery Co., 303 U. S. 552 52

Northern Securities Co. v. United States, 193 U. S. 197 13, 19, 41, 52, 80

O'Brien v. United States, 290 F. 185 82, 83

Patterson v. United States, 222 F. 599 82

People v. Fisher, 14 Wend. 9 41, 42, 46

Santa Cruz Fruit Packing Co. v. National Labor Relations Board, 303 U. S. 453 55, 75, 76, 77

Snow v. Wheeler, 113 Mass. 179 47

Standard Oil Company v. United States, 221 U. S. 1 7, 16 19, 22, 40, 52

Standard Oil Co. v. United States, 283 U. S. 163 81

Steers v. United States, 192 F. 1 82

Sugar Institute, Inc. v. United States, 297 U. S. 553 62

Tub Women v. The Brewers of London, 1 Lev. 125; 1 Sid. 274; 1 Keb. 350 42

United Leather Workers v. Herkert and Miesel, 265 U. S. 457 55, 56, 59, 72

United Mine Workers of America v. Coronado Coal Co., 268 U. S. 295 9, 10, 58, 80

United States v. Borden, 308 U. S. 188 12

United States v. Brims, 272 U. S. 549 80

United States v. Joint Traffic Association, 171 U. S. 508 13, 17, 52

United States v. Patten, 226 U. S. 525 79

United States v. Patterson, 55 Fed. 605 (C. C. D. Mass. 1893) 41

United States v. Trans-Missouri Freight Association, 166 U. S. 290 7, 13, 17, 20, 40, 41, 52

United States v. Workingmen's Amalgamated Council 54 Fed. 994 41

PAGE

Wilder Manufacturing Co. v. Corn Products Company, 236 U. S. 165 64

Wright v. Vinton Branch of Mountain Trust Bank of Roanoke, 300 U. S. 440 27

STATUTES

Clayton Act, Act of October 15, 1914, c. 323, Sections 6 and 20; 38 Stat. 731 9, 12, 49, 52

National Industrial Recovery Act, Act of June 16, 1933, c. 90; 48 Stat. 195 67

National Labor Relations Act, Act of July 5, 1935, c. 372; 49 Stat. 449; U. S. C. Supp. I, Title 29 66, 69, 71

Norris-LaGuardia Act, Act of March 23, 1932, c. 90; 47 Stat. 70; 29 U. S. Code, Section 101, et seq. 52, 61

Sherman Anti-Trust Act, Act of July 2, 1890, c. 647, 26 Stat. 209, U. S. C. Title 15, Sec. 1 and 2 21, 23

TEXTS

IV Blackstone, Commentaries 158 25

Berman: Labor and the Sherman Act (1930) 40

Hoar: Biography of Seventy Years (1903) 7

Landis: Cases on Labor Law, Historical Introduction 47

MISCELLANEOUS

Congressional Record,

Vol. 21 31, 32, 33, 34, 35, 36, 37, 38, 39

Vol. 51 49

Senate Report No. 698—63rd Congress, 2nd Session 51

Senate Report No. 163—72nd Congress, 1st Session 52

Senate Report No. 573—74th Congress, 1st Session 68

House Report No. 669—72nd Congress, 1st Session 52

House Report, No. 1147—74th Congress, 1st Session 68

Hearings before Senate Committee on Education and Labor, U. S. Senate, 74th Cong. 1st Session on S. 1958, March, 1935 68

In The

SUPREME COURT OF THE UNITED STATES

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o. 638. OCTOBER TERM, 1939.

PEX HOSIERY COMPANY, a Pennsylvania Corporation,
Petitioner,

vs.

ILLIAM LEADER and AMERICAN FEDERATION
F FULL FASHIONED HOSIERY WORKERS, Philadelphia, Branch No. 1, Local No. 706,
Respondents.

BRIEF FOR RESPONDENTS

I. OPINIONS BELOW

The opinion of the District Court for the Eastern Dist of Pennsylvania was filed April 24, 1939, and has not n officially reported. However, it appears in the Record age 1389.

The opinion of the Circuit Court of Appeals for the rd Circuit, reversing the judgment entered in the Dis- Court, was filed November 29, 1939, and is reported 08 F(2d) 71. It appears in the Record at page 1399.

II. JURISDICTION

The jurisdiction of this Court has been invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925 (43 Stat. 938; 28 U. S. C. A. Section 347(a).)

III. STATEMENT OF THE CASE

The Apex Hosiery Company, a Pennsylvania Corporation, petitioner, brought this civil action in the District Court for the Eastern District of Pennsylvania, against the respondent Union; William Leader, its President; Joseph Burge, its Vice-President; Harry Omeig, its Treasurer; and Huey Brown, its Secretary; claiming to recover losses to its property and business sustained by reason of a sit down strike at its plant, from May 6, 1937, until June 23, 1937, when the strikers left the plant, in compliance with an injunction issued by Judge Kirkpatrick, following the decree of the Circuit Court of Appeals. (See: Apex v. Leader, 90 Fed. (2d) 155.)* There is no diversity of citizenship in this case. The cause of action is based upon Section 4 of the Clayton Act.

The Apex Hosiery Company has a plant in Philadelphia, in which, during 1937, it employed about 2500 workers (R. 101). The plant produced about 100,000 dozen pairs of women's hosiery per month (R. 102, 107, 1215). The Company shipped about 85% of its production into other states

*Reversed because cause was moot in Leader et al. v. Apex, 30[illegible] U. S. 656.

(R. 109). There is no evidence that the Union had knowledge of these facts.

Prior to the sit-down strike, the plant was operated as an open shop (R. 110).

About the middle of April, 1937, Leader sent a letter to Apex, enclosing a form of contract, which provided, inter alia, for the closed shop, more properly referred to as the "all union shop" (R. 120).

On May 6, 1937, union members employed in other mills in the City of Philadelphia, stopped work for the purpose of coming to the Apex Plant (R. 82, 98). However, the plant had closed down at or about 1:00 o'clock p. m., upon orders issued by Meyers, President of the Apex Company (R. 126, 257), and all workers had gone except maintenance and office workers. Beginning about 2:00 p. m. o'clock on May 6, 1937, thousands of people gathered around the mill (R. 126, 216).

Leader was seen on the steps outside of the mill. He requested admission for the purpose of conferring with Meyers. A conference was refused (R. 127). Leader was heard to declare in a loud voice, "A strike and a sit down" (R. 128). Immediately thereafter, stones were hurled through the windows, the doors were smashed and the crowd surged into the plant (R. 261); machines, equipment, furniture and merchandise were damaged (R. 128); Meyers, the President, and Struve, the General Superintendent of the plant, as well as other employees were assaulted and injured. The jury found that the Union was not responsible for the violence and damage committed on May 6, 1937 (R. 1365).

Leader was sent for and he came into the mill with a committee of Apex workers, and asked Meyers to sign an agreement (R. 129). Meyers refused to sign the agreement.

From May 6 to June 23, 1937, about 150, or more, Apex employees (R. 265) remained in the plant on a "sit-down" strike (R. 138-139, 242, 264, 325), which was authorized and supported by the Union (R. 1363-1364) for the purpose of obtaining an "all union shop" agreement (R. 305).

On June 21, 1937, the Circuit Court of Appeals reversed the decree of the District Court and ordered Judge Kirkpatrick to issue a sweeping injunction, commanding the sit-downers to evacuate the plant, and restraining the union and its membership from various forms of activity. (Apex v. Leader, 90 Fed. (2d) 155), and on June 23, 1937, the strikers left the plant (R. 139-140).

The jury was told by the learned Trial Judge below that the Circuit Court of Appeals held in its former opinion that there was an intention to restrain commerce and to violate the Sherman Act (R. 140).

During the occupancy of the plant by the sit-downers, none of the officers of the Company were permitted to perform their duties in the plant (R. 271). Only watchmen (R. 295) and maintenance men (R. 311) were allowed into the plant (R. 296). The locks on the doors leading into the plant were changed by the sit-down strikers. Machines in the plant were damaged on June 10, 1937 (R. 297-298, 420, 422) and on June 23, 1937 (R. 144, 299, 433, 442). During the period of the sit-down strike, the Company was unable to carry on any operations, and due to the fact that the machines had been damaged, the plant was not able to begin production until August 19, 1937, and full production was not achieved until November 1, 1937 (R. 146).

On May 6, 1937, there was on hand in the plant a total of 130,000 dozen of finished merchandise and merchandise in the greige (undyed and unfinished) (R. 145). There is testimony that counsel for the Company requested Leader

to permit them to go into the plant for the sole purpose of removing the *finished merchandise*, so that it could be shipped against orders, and that Leader refused (R. 619, 620). Leader denied this. There was no evidence that the Union actually authorized the alleged refusal or had knowledge of the request, or the refusal.

Machines were damaged by actual violence (R. 296) and due to lack of use (R. 273).

The petitioner proved damages to plant, equipment, and merchandise which occurred on May 6, 1937, amounting to $26,490.12 (R. 1358), which was not allowed by the jury (R. 1365).

The petitioner proved damage to plant, machinery, and merchandise between May 6 and June 23, 1937. The jury allowed $82,644.59 on this item (R. 1361, 1364).

The petitioner proved overhead expenses in the sum of $122,742.95 (R. 968).

The Company proved that it had earned profits from January 1, 1937 to May 6, 1937, at the rate of $6,111.00 per week (R. 1164, 1358). The Company had operated at a loss during the years 1933, 1934, 1935 and 1936 (R. 1172-1173). A general slump in the market occurred during the last six months of 1937 (R. 1247, 1263). However, more hosiery was sold during 1937 than 1936 (R. 1261). In 1936 the annual national shipments were 37,400,782 dozen pairs. In 1937, the annual national shipments were 39,678,-784 dozen pairs of hosiery (R. 1261). The productive capacity of all the full fashioned hosiery mills in the United States was 8,000,000 or 10,000,000 dozen pairs more than the sales (R. 1233-1234). There was no change in prices (R. 1195-1196).

At the conclusion of the petitioner's case, the respondents moved that the case be dismissed, which motion was

denied (R. 628). At the conclusion of the entire case, the respondents filed a motion for a directed verdict for the defendants, in accordance with Rule 50 (b) of the New Rules of Federal Practice, which motion was denied (R. 1305, 1348).

The jury was given a list of questions propounded by the learned Trial Judge in the nature of special findings of fact (R. 1354-1357, 1363, 1367).

The jury returned a verdict for the petitioner and against the respondents. As to the defendants Joseph Burge, Vice-President; Harry Omeig, Treasurer; and Huey Brown, Secretary of the Union, the jury found for the defendants and against the plaintiff (R. 1361). A motion was made that the verdict be trebled, and this was done (R. 1363). A judgment was entered on the trebled verdict in the sum of $711,932.55, together with counsel fees in the sum of $25,000.00, allowed by the Court, and costs to be taxed (R. 1368).

The respondents filed a motion to set aside the verdict and judgment against them (R. 1369) and also a motion and reasons for new trial (R. 1370-1388). The learned Trial Judge below dismissed the motions and his opinion appears at R. 1389-1391.

On appeal the Circuit Court of Appeals, in an opinion filed Nov. 29, 1939, (R. 1399-1417) reversed the judgment and remanded with instructions to enter judgment for the respondents herein.

The petitioner filed a petition for rehearing (R. 1421-1436) and same was denied on Dec. 27, 1939 (R. 1437).

On January 12, 1940, petitioner filed its petition in this Court for a writ of certiorari to the Circuit Court of Appeals for the Third Circuit, which petition was granted on February 26, 1940.

IV. SUMMARY OF ARGUMENT

It is contended that the Sherman Anti-Trust Act does not apply to labor unions. The statute contains terms of art, namely, "contract in restraint of trade" and "combination or conspiracy in restraint of trade". These terms must be given their common law meaning, otherwise, the entire Sherman Act is unconstitutional and void, as violative of the due process clause of the Fifth Amendment to the United States Constitution. *Cline v. Frink Dairy Co.*, 274 U. S. 445.

At common law, the terms "contract in restraint of trade" and "combinations or conspiracies in restraint of trade" did not apply to labor unions. This is clear upon consideration of the public policy underlying the doctrine inhibiting contracts and combinations in restraint of trade at common law. Chief Justice White, who had dissented in the case of *United States v. Trans-Missouri Freight Association*, 166 U. S. 290 (1897), insisted in his dissenting opinion that to read out of the Sherman Act the rule of reason is to include within the terms of that statute combinations of workers. Since the rule of reason, as expounded by Chief Justice White, became the doctrine of the Supreme Court in *Standard Oil Company v. United States*, 221 U. S. 1, it follows that labor unions are not within the terms of the statute.

This conclusion is amply supported by the Congressional debates, which establish decisively that the legislature intended to exclude labor unions from the purview of the act. The Congressional debates, and particularly the explanation of the bill as given by Senator Hoar, the author,*

*See 2 Hoar: Biography of Seventy Years, p. 364 (1903).

demonstrate clearly that Congress was referring to th common law relating to contracts and combinations in re straint of trade, as it existed in old times in England. I we limit our view to old times in England, it is apparen that the only branch of the common law taken up by th Congress is that which related to monopolies and th means whereby combinations of men suppressed competi tion by engrossing the market to the detriment of th people. Since Congress was seeking an instrument to curb trusts which constituted a threat to the national well-being at the time of the enactment of the Sherman Act, it is clea that the law, as formulated, was intended to strike at th trusts.

The general course and trend of the Congressional de bates show conclusively that Congress was meticulous i selecting terms to be embodied in the statute which woul strike at the trusts only and which could not be converte into an instrument to endanger the existence and growt of labor organizations and farmers' organizations.

That Congress had no intent to embrace the very ol common law doctrine which held that guild rules or con stitutions were in restraint of trade, is further confirme by the fact that at the time of the enactment, rules of u ions whereby restraints were imposed upon the member were not deemed contracts in restraint of trade; nor wer labor unions, which were formed to promote the economi and social welfare of the workers, considered illegal in an sense. The very old common law doctrine relating to th guilds emerged at a time when the social organization o England was entirely different from that prevailing i America in 1890.

The Supreme Court in *Loewe v. Lawlor*, 208 U. S. 27 held that the Sherman Act made no distinction betwee

classes, and that it embraced combinations of workers, as well as business combinations. In this respect, it is submitted the Court committed at least two errors: (a) It gave to the terms of the statute a meaning other than those terms had at common law; and (b) It mis nterpreted the Congressional intent.

A consideration of the times immediately preceding the enactment of the Clayton Act, and a review of the Congressional debates with reference to Section 6 and Section 20 of the Clayton Act, show that it was the intent of Congress to obviate the judicial construction placed on the terms of the Sherman Act in *Loewe v. Lawlor*.

Independently of the foregoing argument, it is contended that the activities involved in this case do not come within the Sherman Act, even if we accept all of the decisions of the Supreme Court in the labor cases as having been correctly decided. It is clear that Sections 1 and 2 of the Sherman Act are limited by the commerce clause of the Constitution, and it has been held that local activities of employees on strike are not within the reach of the Federal power under the Sherman Act. In those cases where the Sherman Act was applied to labor disputes, the Court found that the conspiracy was directly aimed at interstate commerce and that the conspiracy was vitalized by an intent to monopolize the supply of the commodity entering and moving in interstate commerce, or to fix the price of the commodity in interstate markets. This vital distinction is made clear in the *Second Coronado Coal Case*, 268 U. S. 295. Furthermore, the principle of decision in the *Second Coronado Case* has undoubtedly been obviated from the law by the National Labor Relations Act. It is also beyond dispute that the activities condemned in the "secondary boycott" cases were rendered legal by the Norris-LaGuardia Act.

In this case, the jury did not and indeed could not find the kind of intent which turned the case in the *Second Coronado Case*. The jury merely found that the union intended to conduct a sit-down strike.

The petitioner maintains that since the sit-down strike stopped production and prevented the petitioner from manufacturing its product, which it normally ships into other states, the respondents intended to restrain commerce within the meaning of the Sherman Act. The petitioner's contention in this respect is manifestly based upon an erroneous conception of the principle under which the National Labor Relations Act has been held constitutional, and also upon a failure to distinguish between the colloquial meaning of the word "restrain" and the "terms of art" contained in the Sherman Act.

It is clear, however, that the National Labor Relations Act and the decisions of this Court upholding its constitutionality, have not expanded the meaning of "commerce" contained in the commerce clause of the Constitution, nor did those decisions extend the application of the Anti-Trust Act.

The petitioner maintains that the Circuit Court erred in holding that a substantial amount of the commodity must be involved in a case brought under the Sherman Act. It is clear, however, that there could be no suppression of competition, no monopoly of supply, nor price fixing unless a substantial amount of the commodity is involved in the conspiracy. In this case, there was no suppression of competition on the markets; there was no fixing of prices; nor was there any monopoly of supply. Indeed, it is evident that the respondents had no intentions to effect such results. The union in this case employed the sit-down tech-

nique in order to obtain an agreement providing for the "all union shop",—a purely local matter.

Although the acts committed by the respondents in this case were violent, it is clear on principle, as well as established authority, that a violation of the Sherman Act does not depend upon the illegality of the means.

It is respectfully submitted that the decision of the Circuit Court of Appeals for the Third Circuit in this case should be affirmed.

V. ARGUMENT

A. The Sherman Anti-Trust Act Does Not Apply to Labor Unions

At the roots of this case is the challenging question: Does the Sherman Act apply to labor unions? This question is open, in this case, since the lower court did hold that the Sherman Act

> "by its very terms * * * includes the activities of any and all organizations in restraint of trade, and renders them illegal. Congress did not limit the restraint imposed by the Act to business combinations. It included all combinations in restraint of trade within the purview of the Act. See Loewe v. Lawlor, 208 U. S. 274; Gompers v. Buck's Stove and Range Co., 221 U. S. 418; United Mine Workers v. Coronado Coal Company, 259 U. S. 344; Coronado Coal Company v. United Mine Workers, 268 U. S. 298; Bedford Cut Stone Co. v. Journeymen Stonecutters' Association, 274 U. S. 37." (R. 1403)

In this respect, this case differs from *United States v. Borden*, 308 U. S. 188. Furthermore, the Circuit Court below considered the effect of Section 6 of the Clayton Act, Act of October 15, 1914; c. 323, 38 Stat. 731, 15 U. S. C. Section 17, and in answer to the contention, that, by this Section, Congress intended to remove labor unions from the purview of the Sherman Act, held, on the authority of *Duplex Printing Press Co. v. Deering*, 254 U. S. 443, that Section 6 of the Clayton Act did not accomplish that result.

Despite the fact that this Court, in *Loewe v. Lawlor*, 208 U. S. 274, had construed the Sherman Act as having a broader application than at common law, and included labor unions, it is respectfully submitted that this was an erroneous construction;

(a) It gave to the terms of the Act a broader application than they had at common law.

(b) It relied upon two former decisions by the Supreme Court, namely, *U. S. v. Trans-Missouri Freight Ass'n.*, 166 U. S. 290 (1897), and *U. S. v. Joint Traffic Association*, 171 U. S. 508 (1898), which likewise did not construe the terms of the Act in accordance with the common law concepts. But the broad construction adopted in these two former decisions had been repudiated by a majority of the Court in the case of *Northern Securities Co. v. U. S.*, 193 U. S. 197 (1904).

(c) It erroneously imported into the concept "combination in restraint of trade" a principle of tort law which had application to private, not public, wrongs.

(d) It stems from an unwarranted and incorrect version of the legislative debates in ascertaining the legislative intent.

It is respectfully submitted that this was an erroneous interpretation and construction of the statute, and that this Court will, as it did in *Erie Railroad Co. v. Tompkins*, 304 U. S. 64, correct such erroneous construction, though long adhered to, if upon reconsideration of the statute, the error is clear.

Our present contention is that, as a matter of statutory construction, the Sherman Act, by its very terms, excludes labor unions, and that such construction is confirmed by the

legislative intent, which was clear throughout the entire course of the Congressional debates.

Obviously, the Clayton Act was not intended to bring labor unions within the Sherman Act. On the contrary, Section 6 and Section 20 of the Clayton Act were amendments, calculated to immunize labor unions from the operation of the Sherman Act. It is therefore clear that if the Sherman Act does not, by its very terms, include labor unions, that Section 6 of the Clayton Act did not operate to bring them within that statute.

1. The Terms "Contract in Restraint of Trade" and "Combination or Conspiracy in Restraint of Trade" Must Be Given their Common Law Meaning, Otherwise the Entire Sherman Act Is Unconstitutional and Void

The Sherman Anti-Trust Act was designed by Congress in 1890 to arm the Federal Government with an efficient instrument to curb trusts and monopolies, which were deemed to be injurious to the public at large, in concentrating economic power and control in the hands of the few, to the detriment of the many. The statute was directed at the evils of the trusts, and it was only against these menacing economic aggregates that Congress fashioned this law.

The policy underlying the statute is significant as an aid in its interpretation and construction, but the construction itself must be in accordance with the specific terms contained in the statute. Whereas, at common law, contracts and combinations in restraint of trade were merely void in the sense that the courts would not lend their coercive power in aid of the covenant or combination, the Sherman Act declared illegal such contracts and combinations, "in the form of trusts or otherwise", and imposed grave criminal and civil penalties. The statute took up from the com-

mon law the historical "terms of art" as particularly descriptive of the distinguishing attributes of the trusts.

The statute is only as broad as it is written, and an application of the statute to activities or classes other than those stated or described in it, even though such other activities or classes may constitute threats to the national well being, is unwarranted. With the entire field of interstate and foreign commerce entrusted to its sole care, the legislative power may be exerted against some evils and not others. This is a matter of legislative choice. The fact that other acts or activities are injurious to the public interest, or are so considered by the judicial branch of the government, and might also have been treated by the legislature at the same time it treated those specifically described in the statute in order to more perfectly protect the public interest, is no reason for judicial expansion of the statute beyond its terms.

As this Court pointed out in *National Labor Relations Board v. Jones & Laughlin Steel Corporation*, 301 U. S. 1.

> "We have frequently said that the legislative authority, exerted within its proper field, need not embrace all the evils within its reach. The Constitution does not forbid 'cautious advance, step by step,' in dealing with the evils which are exhibited in activities within the range of legislative power." (p. 46)

Both before and after the decision in *Loewe v. Lawlor, supra*, this Court construed the Sherman Act, in cases involving business combinations, in accordance with the common law meaning of its terms. In the early cases, except two, involving business combinations, prior to the decision in *Loewe v. Lawlor*, this Court construed the statute in accordance with the common law meaning of the technical

terms "contract in restraint of trade" and "combinations or conspiracies in restraint of trade". To do otherwise this Court later pointed out, would render the statute void and totally invalid, as violative of the due process clause of the Fifth Amendment of the United States Constitution, and also as an invalid delegation of legislative power to the judiciary. It is plain that unless the terms set forth in the Act have a sufficiently precise meaning, not only to guide the courts in applying it, but to inform all persons of the kind of acts which are forbidden by law, the statute is unquestionably void, and invalid.

In *Standard Oil Company v. U. S.*, 221 U. S. 1, the statute was attacked as an invalid delegation of legislative power to the judiciary; but this contention was rejected by the Court, which held that the terms used in the statute were derivable from the common law, and were sufficient standards to guide judicial application. However, in *Cline v. Frink Dairy Co.*, 274 U. S. 445, the Court really saved the statute from total invalidity under the due process clause of the Fifth Amendment. The Court in that case said:

> "In the Nash Case we held that the *common law precedents* as to what constitute an undue restraint of trade were quite specific enough to advise one engaged in interstate trade and commerce what he could and could not do under the statute." (p. 460)

And further, the Court said,

> "The common law precedents as to forbidden and permissible restraint of trade were reviewed at great length by the Circuit Court of Appeals of the Sixth Circuit in the case under the Federal Anti-Trust Act in U. S. v. Addyston Pipe and Steel Co., 85 F. 271; affirmed 175 U. S. 211."

And further, the Court said,

> "The language of the Federal statute was read in the light of the *common law* and in accordance with *its reason*, and was construed not to penalize such partial restraints of trade as at common law were not only permitted but were promoted in the interest of the freedom of trade itself." (p. 461) (Italics supplied).

This being so, the statute must be viewed as having taken up *only* that portion of the common law which treated the subject of contracts and combinations in restraint of trade, and no other. Whether or not other activity was deemed illegal at common law, either under statutes or judicial decisions, is immaterial to the point here involved, for the Sherman Act took up only the common law heading relating to the field of restraint of trade,—a branch of the law which dealt with protection of the public interests.

Whether the statute did have a meaning broader than its terms in the light of the common law or not was the subject of sharp disagreement in the Supreme Court in the first few cases in which the government attempted to utilize the Sherman Act against business combinations involving railroads. In the *Joint Traffic* and the *Freight Association Cases, supra*, the majority view was that the terms used in the statute were broader than their meanings at common law.

Since the principle in these cases constitutes one of the grounds upon which the case of *Loewe v. Lawlor, supra*, turned, namely, the construction to be placed upon the statute, it is important that we ascertain the fate of that broad construction. In this connection, the dissenting opinion of Justice White in the *Freight Association Case, supra*, concurred in by three other Justices, is extremely important,

because he points out that to give the statute a construction which holds that *reasonable combinations* are within its purview, brings labor organizations and their activities within the statute. He insisted that the "rule of reason" must be deemed a part of the statute, *otherwise labor unions* would be embraced within it and he referred to the case, *In Re Debs*, 64 F. 724, 745-755, 158 U. S. 564, as proof of the error of the broad construction. He stated,

> "The interpretation of the statute, therefore, which holds that reasonable agreements are within its purview, makes it embrace every peaceable organization or combination of the laborer to benefit his condition, either by obtaining an increase of wages or diminution of the hours of labor. Combinations among labor for this purpose were treated as illegal under the construction of the law which included reasonable contracts within the *doctrine* of the invalidity of contracts or combinations in restraint of trade; and they were only held not to be embraced within that doctrine, either by statutory exemption therefrom or by progress which made reason the controlling factor on the subject. *It follows that the construction which reads the rule of reason out of the statute embraces within its inhibition every contract or combination by which workingmen seek to peaceably better their condition.* It is therefore, as I see it, absolutely true to say that the construction now adopted which works out such results, not only frustrates *the plain purpose intended to be accomplished by Congress*, but also makes the statute tend to *an end never contemplated, and against the accomplishment of which its provisions were enacted.*" (p. 356) (Italics supplied).

The "rule of reason" thus contended for by Justice White became the accepted doctrine of this Court in the *Standard Oil Case, supra,* and should operate to exclude labor unions from the purview of the Act. The same conclusion flows from the common law precedents involving contracts or combinations in restraint of trade.

In *Hopkins v. U. S.*, 171 U. S. 578, (1898) Justice Peckham pointed out

> "To treat as condemned by the Act all agreements under which, as a result, the cost of conducting an interstate commercial business may be increased, would enlarge the *application of the Act far beyond the fair meaning of the language used* * * *"

He then enumerated agreements of a character which he deemed to be beyond the *fair meaning of the language used*, and amongst other rhetorical questions, asked

> "Would an agreement among themselves by locomotive engineers, firemen or trainmen, engaged in the service of an interstate railroad, not to work for less than a certain named compensation, be illegal because the cost of transporting interstate freight would be thereby enhanced?" (pp. 592-594)

It is significant that Justice Peckham referred to the *application* of the Act, to show that it did not reach labor unions.

In *Northern Securities Company v. U. S.*, 193 U. S. 197, (1904), the Court limited the construction and interpretation of the statute to the common law criteria of its terms. In that case, there were four separate opinions. Five of the Justices, including Justice Brewer, agreed that there had been a violation of the statute. The other four justices contended that there had not been a violation of the statute.

However, a majority of the Court, *including Justice Brewer*, construed the statute in accordance with the common law doctrine. Justice Brewer's concurring opinion is significant because he had agreed with the majority in the *Freight Association Case, supra,* despite the dissenting opinion of Justice White as to the proper construction of the statute. He said,

> "Whenever a departure from the common law rules and definitions is claimed, the purpose to make the departure should be clearly shown. *Such a purpose does not appear and such a departure was not intended.*" (p. 361)

2. At Common Law the Terms "Contract in Restraint of Trade" and "Combinations or Conspiracies in Restraint of Trade" Did Not Apply to Labor Unions in their Relation with Employers

Justice Holmes wrote a dissenting opinion in the *Northern Securities Case* in which White, Fuller and Peckham, JJ. concurred. This opinion is most important because in it is set forth the precise meaning of the terms "contract in restraint of trade" and "combinations or conspiracies in restraint of trade". His construction of the statute was made without reference to "the question of the power of Congress". (p. 411).

> "The Act says nothing about competition. *I stick to the exact words used.* The words hit two classes of cases *and only two* * * * contracts in restraint of trade are dealt with and defined by the common law * * * *Contracts in restraint of trade, I repeat, were contracts with strangers to the contractor's business and the trade restrained was the contractor's own. Combina-*

tions or conspiracies in restraint of trade, on the other hand, were combinations to keep strangers to the agreement out of the business * * * They were regarded as contrary to public policy because they monopolized or attempted to monopolize some portion of the trade or commerce of the realm." (p. 403) (Italics supplied)

ustice Holmes construed Sections 1 and 2 of the statute *in pari materia*, and said,

"All that is added to the first section by section 2 is that like penalties are imposed upon every single person who, without combination, monopolizes or attempts to monopolize commerce among the states." * *

hroughout his opinion, Justice Holmes lays emphasis n the fact that the statute is directed against such con- ts which impair *business by self-restraint imposed by act*, and such combinations resulting from agreements *keep rivals out of the business and ruining those already* (Italics supplied)

further construing the statute, Justice Holmes pointed that Section 7 thereof, which created the civil right for le damages, gave an action to

"outsiders who are injured in their attempts *to compete with a trust or other similar combination* * * *" (p. 405) (Italics supplied).

e conclusion to be drawn from this opinion is that r unions are not within the terms of the statute since

(a) The statute was directed against trusts and not against labor unions. Labor unions do not engage in business.

(b) The type of contract (constitution, by-laws and rules) which binds workingmen together is not within the field of competitive business relations.

In *Standard Oil Company v. U. S.*, 221 U. S. 1 Chief Justice White construed the statute in accordance with the common law meaning of its terms, and made the "rule of reason" the doctrine of this Court. He said,

> "There can be no doubt that the sole subject with which the first section deals is restraint of trade *as therein contemplated*, and that the attempt to monopolize and monopolization is the subject with which the second section is concerned. It is certain that those terms, at least in their rudimentary meaning *took their origin in the common law, and were also familiar in the law of this country prior to and at the time of the adoption of the Act in question* * * *. (p. 57) It came moreover to pass that contracts or acts which it was considered had a *monopolistic tendency*, especially those which were thought to unduly diminish competition and hence to enhance price—in other words to monopolize—came also in a generic sense to be spoken of and treated as they had been in England, as restricting the due course of trade and therefore as being *in restraint of trade*. The dread of monopoly as an emanation of governmental power, while it passed at an early date out of mind in this country, as a result of the structure of our government, did not serve to assuage the fear as to the evil consequences which might arise from the acts of individuals producing or tending to produce the consequences of monopoly. It resulted with treating such acts as we have said as amounting to monopoly * * * served to enforce and illustrate the purpose to prevent the occurrence of the

evils recognized in the mother country as consequent upon monopoly by providing against contracts or acts of individuals or *combinations of individuals or corporations deemed to be conducive to such results.*" (Italics supplied)

In this case, he construed Sections 1 and 2 as *in pari materia*, and said that the second section of the Act was intended

"to supplement the first, and to make sure that by no possible guise could the public policy embodied in the first section be frustrated or evaded * * * Having by the *first section* forbidden all means of *monopolizing trade, that is unduly restraining it*, by means of every contract, combination, etc., the second section seeks, if possible, to make the prohibitions of the Act all the more complete and perfect by embracing all attempts to reach the end prohibited by the first section, that is restraints of trade, by any attempts to monopolize or monopolization thereof, even although the acts by which such results are attempted to be brought about or are brought about, be not embraced *within the general enumeration of the first section.* And, of course, when the *second section is thus harmonized with and made as it was intended to be, the complement of the first* * * *" (pp. 60-62) (Italics supplied)

We have already seen that in the view of Chief Justice White, the "rule of reason" excludes labor unions from the operation of the statute.

We have pointed out that in the *Cline v. Frank Case*, *supra*, the Court took up the opinion in the *Addyston Case*, 175 F. 271. Judge Taft, in the latter case, explained the reason for the exemption of "partial restraints of trade". The

"rule of reason" represented a relaxation of the old common law doctrine relating to contracts in restraint of trade. It really meant that the covenantee would receive protection and be entitled to judicial aid and enforcement of the restrictive covenant if it was

> "merely ancillary to the main purpose of a lawful contract and necessary to protect the covenantee in the enjoyment of the legitimate fruits of the contract or to protect him from the dangers of an unjust use of those fruits by the other party". (p. 282)

In *Horner v. Graves*, 7 Bing, 735, 131 Eng. Repr. 28, Tindal, C. J., lays down the test of reasonableness of such covenants as follows:

> "Is the restraint such as to afford fair protection to the one receiving it and not so large as to interfere with the interests of the public?"

It is thus clear that the main purpose of the contract serves as the basis of judgment of the measure of protection needed by the covenantee. If the covenant exceeds the necessity presented in the main contract, it is void because

(a) It oppresses the covenantor without any corresponding benefit to the covenantee; and

(b) It tends to a monopoly.

Judge Taft continued and discussed combinations in restraint of trade, and pointed out that where the sole object of the combination is to restrain competition and to enhance and maintain prices, it is against public policy and there is nothing to justify or excuse it. It tends to monopoly and is void. As to *such* combinations, the common law has no exculpatory "rule of reason".

(a). The Public Policy Underlying the Inhibitions against Restraints of Trade at Common Law

The common law rule against combinations in restraint of trade is deeply rooted in a public policy which seeks to protect the people from the evils of monopoly.

> "This must be injurious to the public, by putting it in the power of one or two rich men to raise the price * * *"
>
> *IV Blackstone, Commentaries, 158.*

In *Mitchel v. Reynolds*, 1 P. Wms. 181, 190 (1711), 24 Eng. Repr. 347, Chief Justice Parker, as though foreseeing the evil of the "trusts", said, in declaring the public policy underlying the rule against contracts in restraint of trade,

> "Another reason is the great abuses these voluntary restraints are liable to; as for instance, from corporations who are perpetually laboring for exclusive advantages in trade, *and to reduce it into as few hands as possible.*"

Judge Taft, in the *Addyston Case, supra*, referred to *Alger v. Thatcher*, 19 Pick. 51, 54, for additional considerations of public policy underlying the common law rule and these were that they

> "prevented competition and enhanced prices; they exposed the public to all the evils of monopoly and this especially is applicable to wealthy companies and large corporations who have the means, unless restrained by law, *to exclude rivalry, monopolize business and engross the market.*"

Before turning to the Congressional debates, we think clear upon considerations of such public policy that com-

binations of workers in their relations to employers were not deemed illegal at common law as in restraint of trade. A consideration of the history of the period immediately preceding and accompanying the passage of the Sherman Act, and of the mischief to be remedied, makes it clear beyond dispute that labor unions are not within the purview of the Act, and did not constitute the evil to be remedied. *Atlantic Cleaners & Dyers, Inc. v. U. S.*, 286 U. S. 427. Manifestly, the rules and regulations of labor unions, whereby the members assume restraints upon their freedom of action in employment, cannot be deemed within the Federal power under the Sherman Act.

We may now turn to the Congressional debates to confirm the contention that the Sherman Act does not, by its very terms, apply to labor unions.

3. The Congressional Debates Establish Decisively that the Legislature Intended To Exclude Labor Unions from the Purview of the Act

To avoid any misunderstanding, it must be made clear at the very outset that all references to labor unions during the course of debate, were made regarding the bill reported by the *Committee on Finance* and that *this bill* was directed at

> "all arrangements, contracts, agreements, trusts or combinations * * * made * * * with a view or which tend to prevent full and free competition in articles of growth, *production*, or *manufacture* * * *; and all arrangements, trusts or combinations * * * made with a view or which tend to *advance the cost to the consumer* * * * (21 Cong. Rec. 2455) (Italics supplied)

The bill, which was finally adopted, was reported out by

the *Committee on the Judiciary* as a substitute measure, and it was stated in the *common law terms.*

We will therefore consider the debates under two headings:

(a) The Debate in the Senate on the Bill as Reported by the Committee on Finance

It is permissible to turn to the Congressional debates for aid in the construction of legislation, where its meaning is doubtful or obscure. Our contention is that the meaning of the Sherman Act is neither doubtful nor obscure. But in *Loewe v. Lawlor, supra*, the Court did refer to the Congressional debates to confirm its view that labor unions were embraced within its sphere. It should be proper to reexamine the debates to ascertain whether the Court arrived at a proper conclusion. But at all events, resort can be had to the debates in general

> "in order to show common agreement on purpose as distinguished from interpretation of particular phraseology."
>
> *Wright v. Vinton Branch of Mountain Trust Bank of Roanoke*, 300 U. S. 440 (1937). (Note 8.)

During the course of the debate, all of the Senators, who spoke against the bill, attacked it on two grounds:

1. They entertained doubt as to the constitutional authority of the Congress to reach the trusts; and

2. They thought the bill was so broad in its terms, that, instead of accomplishing the objective of striking down the trusts, it would be utilized to attack organizations of workers and organizations of farmers.

All of the Senators were in accord that labor unions

and farmers' organizations were economically necessary and constituted no threat to the nation. Only Senator Edmunds thought that if legislation was designed against enhancement of prices by combinations of employers, inhibitions should be directed against combinations of workers to prevent wage increases.

Senator Vest, conceding the "terrible evil" of the trust, thought that the proper approach to the problem was to deprive these trusts of the benefits of the high protective tariff. (21 Cong. Rec. 2465).

Senator Pugh argued that the Federal government might not have power to reach the trusts; but he, like all the others, wanted to devise an efficient, constitutional and valid measure "to prevent or mitigate these evils". (21 Cong. Rec. 2558).

Senator Ingalls introduced an amendment, so that the bill would operate against options and futures, which proposal Senator Sherman objected to, because it created a tax which must originate in the House (21 Cong. Rec. 2559).

Senator Teller pointed out that the bill, as drawn, referred to prices, and therefore must of necessity include the Farmers' Alliance and other farmer organizations, and asked,

> "Does anybody believe that these organizations are inimical and hostile to the public welfare?" (21 Cong. Rec. 2561).

Senator Teller reiterated the same criticism Senator George had made to a former bill reported by the Finance Committee, and showed that this bill reaches labor organizations, as well as farmers' organizations. (21 Cong. Rec. 2561). Without contradiction, Senator Teller argued that the bill, as drafted, would take in all labor unions, and

that this was clearly *not intended*. He read a statement in a daily paper, regarding the sweated conditions of tailors in London, and stated that surely no one intended to prevent laborers from combining to improve their conditions. He pointed out further that a bill should be properly drafted, which would be *confined to trusts and not because of poor drafting, strike down farmer and labor groups.*

Senator Stewart introduced into the record the English Act of 1844, to abolish the offenses of forestalling, regrating and engrossing, and other statutes. He argued that the difficulty with such legislation was that the offense could not be properly defined. He said, prophetically,

> "that the true remedy against such trusts is that of counter combination among the people * * * I think the bill is on the wrong basis and it will cut in the wrong direction if it passes." (21 Cong. Rec. 2566).

Senator Hoar criticized the bill as ineffective, and technically bad. (21 Cong. Rec. 2568).

Senator Platt stated that he thought the bill may not reach the trusts at all. (21 Cong. Rec. 2568).

Senator Hoar then said, in commenting on the crudity of the bill, that because of haste,

> "We may get up some crude hasty legislation, which does not cure the evil, which keeps the word of promise to the ear and breaks it to the hope." (21 Cong. Rec. 2568).

Senator Teller stated,

> "My real objection to this bill is that it is delusive."

He made specific reference to the Act of 1884 of France, which encouraged the organization of laborers, and the organization of farmers. He feared that the bill, then being

debated, would attack the farmer and labor groups, rather than the trusts. Because the bill in his opinion was not well drawn, delusive and could be turned against farmers and labor organizations, he suggested that the bill be referred to the Judiciary Committee so that they should bring out a bill

> "which will be constitutional and which will be vigorous and effective * * * and do what I have no doubt the Senator from Ohio (Sherman) wants to do." (21 Cong. Rec. 2572).

Senator George then moved that the bill be referred to the Judiciary Committee and he reviewed the course of the many Sherman proposals. He showed that the first proposal was introduced on August 14, 1888; and a second proposal was reported out by the Committee on Finance on September 11, 1888, but that both proposals were bad on constitutional grounds; that on January 25, 1889, a third bill was proposed, which also was bad on constitutional grounds; that at the 51st Congress, then in session, on January 14, 1890, the Finance Committee reported out still another bill, which also was bad on the grounds of jurisdiction; that on March 18, 1890, the bill, then under discussion, was reported out and was based upon another purported constitutional power. He argued, from this review, that the Finance Committee was apparently unable to find constitutional warrant for the legislation desired, and contended that the bill should be sent to the Judiciary Committee, which is in charge "of these great questions". (21 Cong. Rec. 2600).

Senator Platt argued in favor of the motion to refer, so that a proper bill would be formulated. (21 Cong. Rec. 2607).

There was fear by some of the Senators that the motion to refer to the Judiciary Committee was a tactic calculated to kill the bill.

After some more debate, in which Senator Morgan argued that the bill was an empty shell, that it would fail to accomplish the desired objective, and that it endangered labor unions, the motion to refer to the Judiciary Committee was lost.

The Senate, still sitting as a Committee of the Whole, then passed the Reagan amendment, as a substitute for the original bill proposed by the Committee on Finance. (21 Cong. Rec. 2611).

Because of the criticism that the bill was delusive and not well drawn, and could be applied against labor unions and farmers' organizations, which was a result not desired by any Senator, Senator Sherman offered an amendment to his bill, not because he thought it was necessary, but "to avoid any confusion". Senator Sherman was the Chairman of the Finance Committee and in charge of the bill. The amendment is as follows:

> "provided that this Act shall not be construed to apply to any arrangements * * * between laborers, made with a view of lessening hours or increasing wages, or to arrangements * * * among persons engaged in horticulture or agriculture, made with the view of enhancing the price * * * " (21 Cong. Rec. 2611).

It is interesting to note that at this point Senator Blair offered an amendment to exclude by similarly specific language the cod fisheries and the organizations of manufacturers of boots and shoes. (21 Cong. Rec. 2611).

Senator Platt wanted to protect associations of wool combers, so that they would be excepted from the bill, as

well as labor unions and farmers' organizations. (21 Cong. Rec. 2612).

The Senate sitting in Committee of the Whole, then *adopted the foregoing proviso offered by Senator Sherman as an amendment to the bill.* (21 Cong. Rec. 2612).

Senator Edmunds spoke to the Sherman proviso, which *had already been adopted*, and during the course of his remarks, he argued that capital and labor constitute an equation, and that because of the growth of trusts, which spanned the states, workers had combined in self-defense. He argued that the existence of the trusts led to widespread labor unions, and that the country was beset by these two conflicting groups. He contended that it was wrong to permit workers to combine to increase their wages, if employers were by this bill prohibited from combining to increase prices to offset the wage increases. (21 Cong. Rec. 2727).

Senator George punctured this argument by showing that nothing in the bill prevented each manufacturer from putting up his price separately in order to overcome the wage increase obtained by the combination of workers. (21 Cong. Rec. 2727).

Senator Hoar made the complete answer to Senator Edmunds as follows:

> "he thought that the applying *to laborers* in this respect a principle which was *not applied* to persons engaged in the *large commercial transactions* which are chiefly aimed at by this bill was indefensible in principle. Now it seems to me there is a very broad distinction which * * * will warrant not only this exception * * * but a great deal of other legislation which we enact * * * relating to the matter of labor." (21 Cong. Rec. 2728). (Italics supplied)

He proceeded to distinguish between a "mere commercial transaction" and labor, which touches the "Government and the character of the state itself". And he said, further

> "when we are dealing with one of the other classes the combinations aimed at chiefly by this bill, we are dealing with a transaction, the only purpose of which is to extort from the community, monopolize, segregate and apply to individual use for the purposes of private greed, wealth which ought properly and lawfully and for the public interest *to be generally diffused over the whole community.*" (21 Cong. Rec. 2728) (Italics supplied)

Later, in answering a question put by Senator Platt, he said that he spoke

> "to point out what I thought the Senator from Vermont (Edmunds) failed to appreciate thoroughly, *the distinction between the associations of laborers and this class of cases at which this bill aims.*" (21 Cong. Rec. 2729). (Italics supplied)

Shortly thereafter, Senator Walthall moved to refer the bill to the Judiciary Committee, and by a vote of 31 "Yeas" and 28 "Nays", the bill was referred to the Judiciary Committee. (21 Cong. Rec. 2731).

It is clear from the *course of the debate* up to this point that:

1. There was general agreement that the evil to the nation emanated from the trusts;

2. The bill, because of its emphasis upon articles of growth, production, manufacture and prices, necessarily included farmer groups and labor unions;

3. Farmer groups and labor unions constituted no threat to the national well-being;

4. The intention of the Senate was to draft a bill which would efficiently and vigorously attack the trusts and not labor unions and farmer groups;

5. Senator Sherman's proviso was adopted by the Senate sitting as a Committee of the Whole, to specifically exclude labor unions and farmer groups.

6. In all references by the Senators to the groups endangered by this bill, the farmer groups were coupled with the labor groups.

7. The bill was referred to the Judiciary Committee solely for the purpose of devising a constitutionally valid law, which would be directed against trusts and not against anything else.

(b) The Debate in the Senate on the Bill Reported out by the Committee on the Judiciary

On April 8, 1890, *Senator Hoar*, a member of the Judiciary Committee, of which Senator Edmunds was Chairman, obtained unanimous consent "that the trust bill be taken up". (21 Cong. Rec. 3145). The Judiciary Committee had stricken out all language after the enacting clause and promulgated a substitute bill and offered it as an amendment. (21 Cong. Rec. 3145). *The bill proposed by Senator Hoar became the "Sherman Act" as we know it.* Senator Sherman, who had offered the amendment expressly excluding labor groups and farmers' organizations, which was adopted by the Senate, (21 Cong. Rec. 2612), said he had fairly and fully considered the amendment offered by the Judiciary Committee and would vote for it. (21 Cong. Rec. 3145). The amendment was agreed to by the Senate, sitting

as a Committee of the Whole and then reported to the Senate. Senator Reagan suggested an amendment to permit suits in state courts under Section 7 (21 Cong. Rec. 3146). Senator Hoar, *who was in charge of the bill* and who had previously spoken so eloquently on behalf of farmers' groups and labor organizations in reply to Senator Edmunds, (21 Cong. Rec. 2728), described the bill as "undertaking to curb by national authority *an evil*, * * *". (All Senators who spoke on the original bill and the amendments, referred to the trusts as the evil which had beset the nation.) Senator Hoar, in explaining this bill, stated that the evil was

> "these great monopolies which are becoming not only in some cases an actual injury to the comfort of ordinary life, but are a menace to republican institutions itself * * *"

And further, that the bill, which was sent to the Judiciary Committee, was

> "exceedingly crude *in this matter*",

and that the Judiciary Committee had agreed upon

> "what we believe will be a very efficient measure, under which one long forward step will be taken in suppressing *this evil*". (Italics supplied)

He followed this remark by this carefully worded statement,

> "We have affirmed the *old doctrine of the common law* in regard to all interstate and international *commercial transactions*." (21 Cong. Rec. 3146) (Italics supplied)

Senator George, also a member of the Judiciary Committee, and who had argued that legislation to curb the

trusts was demanded by the people and that such legislation should be carefully drafted so as to strike at the trusts only, said of the new bill,

> "It covers professedly *a very narrow territory*, leaving a large number of these institutions, *these trusts*, or whatever we may call them, entirely without the purview of the bill." (Italics supplied)

He then argued for the Reagan amendment so that "the wretched victims" who are oppressed by "*these great combinations*" might join in one class suit to recover the damages they might sustain. To illustrate the necessity for this, he referred to the financial inability of "*small farmers*" to go to a distant town, employ a lawyer and sue one of *these great trusts*. (21 Cong. Rec. 3147-3148).

Senator Edmunds, the Chairman of the Judiciary Committee, in speaking against any such amendment for fear that the bill would be rendered invalid and

> "that it was entirely inadmissible for the purposes of *the very people* who are concerned in it,"

continued by pointing out that

> "if I were a lobbyist of some of *these trusts and combinations that are affected by this bill*,"

he would seek to break it down; and further

> "if we were really in earnest in wishing to strike at *these evils* broadly in the first instance as a new line of legislation * * * we should make *its definitions out of terms that were well known to the law already*, and would leave it to the courts in the first instance to say how far they would carry *it or its definitions* as applicable to each particular case as it may arise. I should hope that the Senate of the United States, being in

earnest about *this business* would allow us to pass a bill that is *clear in its terms, is definite in its definitions and is broad in its comprehension* * * *" (21 Cong. Rec. 3148). (Italics supplied)

And further, in explaining the framework of the bill,

"It provides, fourth, that on the part of the United States defending *all small people* * * *" (21 Cong. Rec. 3149). (Italics supplied)

Senator Morgan then said,

"I should be satisfied with this bill * * * as a bill that would cover *the evil* * * *" (21 Cong. Rec. 3149). (Italics supplied)

Senator George continued to argue for his amendment to permit class suits in state courts on behalf of

"the poor, unlettered and unskilled American *farmer* and American *mechanic* and American *laborer*, who are the great sufferers by these *trusts and combinations*."

He viewed Section 7 of the bill as a snare and delusion

"so far as a remedy *to the real parties injured by these trusts* is concerned." (21 Cong. Rec. 3149-50). (Italics supplied)

The Reagan and George Amendments to strengthen the civil remedy section were defeated on the ground that the Congress could not empower the state courts to entertain suits for penalties for violation of federal laws and because, as Senator Hoar pointed out, one state court could not render a judgment for a penalty for acts committed in another state. (21 Cong. Rec. 3150).

Senator Kenna then asked about the scope of the word "monopoly". Edmunds replied that it had the meaning "as the courts apply it". (21 Cong. Rec. 3151). In answer to the specific illustration of a man who by his skill and intelligence became the sole or dominant dealer in a particular commodity, Senator Edmunds replied that he has no monopoly at all, "he has not bought off his adversaries". (21 Cong. Rec. 3152.)

Senator Hoar then broke in and said:

> "that monopoly is a *technical term known to the common law*, * * * It is the sole *engrossing* to a man's self by means which prevent other men from engaging in *fair competition with him.*"

He continued on to explain a monopoly granted by the King was a direct inhibition of all other persons to engage in that business or calling. He supposed that the illustration offered by Senator Kenna was not a monopoly, because monopoly

> "involved something like the use of means which made it impossible for other persons to engage in fair *competition*, like the *engrossing*, the buying up of all other persons engaged *in the same business.*" (21 Cong. Rec. 3152). (Italics supplied)

Senator Kenna asked whether such a monopoly as described by Senator Hoar was bad at common law, and upon receiving a reply from Senator Hoar that it was, asked then "why pass a bill to denounce it"? Senator Hoar replied, *that there is no common law of the United States* and that

> "The great thing that this bill does, except affording a remedy, is to extend *the common law principle*

which protected *fair competition in trade in old times in England* to international and interstate commerce in the United States." (21 Cong. Rec. 3152). (Italics supplied)

ereupon, Senator Edmunds read a dictionary definition "monopoly" and said

"So I assure my friends that although we may be mistaken * * * we thought we had done the right thing, in providing in the very phrase we did, that if one person, instead of two, by a combination, if one person alone, as we have heard about the wheat market in Chicago, for instance, did it, it was just as offensive and injurious to the public interest as if two had combined to do it." (21 Cong. Rec. 3152).

The amendment by the Judiciary Committee was put to vote and concurred in. It was read a third time and passed ally by a vote of Yeas, 52, Nay, 1, Absent, 29. The title as then amended to read, "A Bill to Protect Trade and ommerce against Unlawful Restraints and Monopolies". 1 Cong. Rec. 3153).

No reference was made to the possible application of the ll to labor or farmer organizations. This possibility was t referred to during the course of the debate in the ouse. The reason for this is plain, and that is that the *l common law principles* which protected fair competition d trade *in old times in England*, could not be deemed to brace labor unions or farmer groups. Having clearly pressed themselves on this point throughout the entire urse of the debate, the only question in the minds of the gislators was whether or not the measure was

"well constructed to restrain the undesirable activities

of business combinations." See *Berman: Labor and the Sherman Act* (1930).

Chief Justice White, who, as we have seen, contended in his dissenting opinion in the *Freight Association Case* that to read the rule of reason out of the statute resulted in embracing every contract or combination of workers, said:

> "The debates * * * conclusively show that the main cause which led to the legislation was the thought that it was required by the economic conditions of the times, that is, *the vast accumulations of wealth in the hands of corporations and individuals*, the enormous development of corporate organizations, the facility for combination which such organizations afforded, the fact that the facility was being used, and that combinations known as trusts were being multiplied, and the widespread impression that their power had been and would be exerted to oppress individuals and *injure the public generally*." (Italics supplied)

Standard Oil Case, 221 U. S. 1, 50.

We respectfully submit, therefore, that on the point of legislative intent, the statement by Chief Justice Fuller in *Loewe v. Lawlor*, *supra*, that "the Act made no distinction between classes" is decisively proved to be error, and that his conclusion that the legislation did not exempt organization of farmers and laborers was wrong.

4. Labor Unions in their Relations with Employers Were not within that Field of Common Law which Dealt with Combinations in Restraint of Trade

We have already seen that,—under the common law construction of the terms of art used in the statute, to defi-

he essential evil at which the statute was directed,—labor nions did not come within those terms. Holmes, J. in *Northern Securities Case, supra;* White, J. in *Freight Association Case, supra;* Taft, J. in *Addyston Case*, 85 F. 71.

One further observation may be made. In *Loewe v. Lawlor, supra*, Chief Justice Fuller adopted the opinion of Judge Billings in *United States v. Workingmen's Amalgamated Council*, 54 Fed. 994 (C. C. E. D. La. 1893)*.

In that opinion, Judge Billings utilized the decision in *People v. Fisher*, 14 Wend. 9 (1835). But Chief Justice Shaw had clearly pointed out in *Commonwealth v. Hunt*, 45 Mass. 111, 135 (1842) that this decision

> "was founded on the construction of the revised statutes of New York, by which this matter of conspiracy is now regulated. It was a conspiracy by journeymen to raise their wages, and it was decided to be a violation of the statutes, making it criminal to commit any act injurious to trade or commerce. It has, therefore, an indirect application only to the present case."

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*No mention was made of Judge Putnam's opinion in United States v. Patterson, 55 Fed. 605 (C. C. D. Mass. 1893) in which he terms of the statute were given their common law meaning. aid Judge Putnam:

> "The second section is limited by its terms to monopolies and evidently has as its basis the engrossing or controlling the market. The first section is undoubtedly in pari materia, and so has as its basis the engrossing or controlling of the market, or of lines of trade."

le said further,

> "* * * if the proposition made by the United States is taken with its full force, the inevitable result will be that the Federal Courts will be compelled to apply this statute to all attempts to restrain commerce * * * by strikes or boycotts and by every method of interference by way of violence or intimidation." (p. 641)

The doctrine, selected by Judge Billings, had been carefully analyzed by Judge Daly in *The Master Stevedores' Association v. Walsh*, 2 Daly 1 (N. Y. 1867) and after review of the authorities relied on in *People v. Fisher*, *supra*, he showed that one of them was based on the English statutes regulating wages, (*The King v. Journeymen Tailors of Cambridge*, 8 Modern 11); and that the other was a criminal conspiracy to raise the price of ale by inciting the poor to commit acts of violence against the excisemen. (*The Tub Women v. The Brewers of London* probably *The King v. Sterling*, 1 Lev. 125; 1 Sid. 274; 1 Keb. 350).

Judge Taft referred to the opinion of Lord Campbell, C. J. in *Hilton v. Eckersley*, 6 El. & Bl. 47, 66 (1855); the opinion of Hannen, J. in *Farrer v. Close*, L. R. 4 Q. B. 602, 612 (1869); and *Hornby v. Close*, L. R. 2 Q. B. 153, (1867) in support of the proposition that what was void at common law because in restraint of trade, was not illegal in any other sense. An analysis of these cases and opinions will show that the subject matter there involved could not have been taken up by the Sherman Act.

In *Hilton v. Eckersley*, *supra*, a group of textile manufacturers combined for the purpose of resisting wage demands of the labor unions, and to effectively achieve this objective subjected the control of their business, to the will of the majority. Faithful performance of this agreement was secured by bond. The action was on the bond. The plea in defense was that the bond was against public policy, in that it was in restraint of trade. The bond was held in restraint of trade, and therefore void. Opinions were delivered seriatum. Lord Campbell, C. J. and Crompton, J. delivered opinions in favor of the defendants, whereas Erle, J. delivered an opinion for the plaintiff.

Since Judge Taft referred particularly to the opinion

of Lord Campbell, C. J., and since that opinion deals with the legality of combinations of workers, we must infer that Judge Taft intended to point out that a combination of workers to raisg their wages and improve their conditions, was not criminal at common law. Lord Campbell said:

> "But I cannot bring myself to believe, without authority much more cogent, that, if two workmen who sincerely believe their wages to be inadequate should meet and agree that they would not work unless their wages were raised, without designing or contemplating violence or any illegal means for gaining their object, they would be guilty of a misdemeanor and liable to be punished by fine and imprisonment. The object is not illegal; and, therefore, if no illegal means are to be used then there is no indictable conspiracy. Wages may be unreasonably low or unreasonably high, and I cannot understand why in the one case workmen may be considered as guilty of a crime in trying by lawful means to raise them, or masters in the other can be considered guilty of a crime in trying by lawful means to lower them." 6 El. & Bl. 62, 63.

The opinion of Alderson, B., 6 El. & Bl. 66, affirming the decision below, is also significant on this point. He said:

> "We think that the legislature have been contented to make such strikes not punishable; and certainly, they never contemplated them as being the subject of enforcement by a suit at law on the part of the body of delegates against any workman who might have been seduced by some designing person to sign an agreement with penalty and to continue in the strike as long as a majority were for holding out." (pp. 76-77)

In *Hornby v. Close*, *supra*, an information was lodged

by the president of the Bradford Branch Society of the United Order of Boilermakers and Iron Shipbuilders on behalf of the Society, against Charles Close, a member, charging him with refusal to give up monies of the Society which he had in his possession, contrary to the Friendly Society Statute (18 & 19 Vict. C. 63, S. 9). It was contended for the defendant that the Society was not a society within the meaning of Section 44 of the statute, and further, that the purposes of the society were illegal, being against public policy, in restraint of trade, because by the rules of the union workmen were deprived of the free exercise of their own will in employment, strikes were encouraged by the payment of strike benefits and fines were imposed for obtaining work for non-members.

The magistrate dismissed the action on the ground that he had no jurisdiction. Opinions were delivered seriatim by Cockburn, C. J., Blackburn, Mellor, and Lush, JJ.

Cockburn held that the Society was in fact a trades union and therefore "did not come within the operation of the Friendly Society Act so as to give the magistrate jurisdiction". He assigned two reasons as the grounds for his decision as follows:

> "Therefore, for these two reasons, we hold the present society not within S. 44; first because it is for a purpose not analogous to that of a benevolent or friendly society such as is mentioned in S. 9; and secondly, because those rules, although they may not be illegal in the sense of bringing the parties to them within the criminal law, are in restraint of trade and so far illegal * * * I am far from saying that the members of a trades' union constituted for such purposes would bring themselves within the criminal law, but the rules of such a society would certainly operate in re-

straint of trade and would therefore, in that sense, be unlawful." (p. 159)

He, as well as Blackburn, J. relied upon *Hilton v. Eckersley, supra*. Blackburn, J. said:

> "I do not say the objects of this society are criminal. I do not say they are not. But I am clearly of the opinion that the rules referred to are illegal in the sense that they cannot be enforced; and on this ground also, I think the society not within S. 44 as not being 'for a purpose not illegal'." (p. 159)

The sole issue in this case was whether or not the Friendly Society Statute would afford protection to a trades' union under the language of S. 44 of the statute, against members or officers who embezzled funds of the union. S. 44 of the statute afforded protection only to

> "a friendly society established for any of the purposes mentioned in S. 9 or for any purpose *which is not illegal*."

The decision turned on the scope of the word "illegal" as it appeared in S. 44. The Justices held that the term "illegal" as used in the statute, was broad enough to include purposes which were merely void and was not limited to purposes which were illegal in the sense that they were criminal.

The same problem was involved in *Farrer v. Close, supra*. It is significant that Judge Taft, in the *Addyston case*, 85 F. 271, referred to the opinion of Hannen, J. particularly. In that case, the information was dismissed by the magistrate, and that action was affirmed because the court was evenly divided. Cockburn, C. J. and Mellor, J. deemed the case of *Hornby v. Close, supra*, controlling, and

said that the society was not entitled to the advantage of the statute, but

> "in case of any misappropriation of its funds, must be left to its ordinary legal remedies".

Hannen, J. argued that strikes were not necessarily illegal, and that public policy did not compel the condemnation of strikes. He said in answer to the argument that aiding strikes and paying members not to go to the struck plant, is contrary to public policy as follows:

> "By the expression that a thing is contrary 'to public policy' I understand that it is meant that it is opposed to the welfare of the community at large. I can see that the maintenance of strikes may be against the interests of employers, because they may be forced to yield at their own expense, a larger share of profit or other advantage to the employed; but I have no means of judicially determining that this is contrary to the interest of the whole community; and I think that in deciding that it is, and therefore, that any act done in its furtherance is illegal, we should be basing our judgment not on recognized legal principles, but on the opinion of one of the contending schools of political economists." (p. 613)

Hayes, J., in his opinion for reversal, stressed the same principles enunciated by Hannen, J.

The pointed references by Judge Taft in the *Addyston Case*, *supra*, to the opinion of Hannen, J. in *Farrer v. Close*, *supra*, was undoubtedly made to show that the doctrine of *People v. Fisher*, was not the law of England in 1867. It certainly was not the common law doctrine in the United States and, in 1890, it had already passed out in England

(Act of 1875). See Landis: *Cases on Labor Law, Historical Introduction*, p. 24.

The case of *Snow v. Wheeler*, 113 Mass. 179 (1873), is significant confirmation that this was the state of the law in the United States. In that case, union officers brought a bill in equity to compel the union trustees and a bank to pay over to the union the funds of the union on deposit in the bank. The trustees defended on the ground that the purposes of the union were in restraint of trade since, inter alia, the by-laws of the union prohibited the members from giving instruction to apprentices, except upon permission obtained from the union, and also provided for the support of strikes. The evidence before a special master indicated that these purposes of the union were being carried out.

The Court held for the plaintiffs, and said (pp. 185-186)

> "It is insisted that the agreements thus established between the members of the order are in unlawful restraint of trade, and therefore illegal as being against public policy. But in the opinion of the Court, the point is not well taken."

The opinion goes on to disclose situations in which "an attempt by one side to increase wages by diminishing competition" is not in restraint of trade.

Note that the facts in this case were similar to the facts in the *Close Case, supra*.

That the Sherman Act does not by its terms include labor unions is clear when we consider the fact that the terms thereof, in their historical sense, were applied to persons engaged in competitive business relations only, and that the public policy underlying the rule rendering them void

and unenforcible was, as Tindal and Blackstone said, to prevent concentration of capital power in the hands of the few. When we consider the purpose of a labor organization, it becomes clear that it does not operate against the public interest, does not monopolize the business, does not permit concentration of wealth in the hands of a few men, but on the contrary, seeks to compel businessmen and employers to distribute the gains from business in the form of wages and other benefits, into the hands of the workers and through them to be more widely diffused throughout the community.

It is therefore respectfully submitted that the Sherman Act

(a) Does not, by its terms, apply to labor unions, and that this is harmonious with the legislative intent.

(b) That the Court was in error in applying the Act to the labor union in *Loewe v. Lawlor*, 208 U. S. 274.

The foregoing argument is independent of any consideration of Section 6 of the Clayton Act. A consideration of the history of the period immediately preceding and accompanying the passage of the Clayton Act and of the mischief to be remedied, as well as the general trend of debate on Section 6 of the Clayton Act in the Congress, sanctions the conclusion that Congress meant to undo the decision of the Court in *Loewe v. Lawlor*. Although the Court adhered to the doctrine of *Loewe v. Lawlor* in *Duplex v. Deering* and in *Bedford Cut Stone Co. v. Journeymen Stonecutters Association*, 274 U. S. 37, the Court should nevertheless overrule a construction of the Sherman Act which makes that statute applicable to labor unions with respect to their relations to employers.

5. *To Obviate the Judicial Construction of the Sherman Act in Loewe v. Lawlor, Congress Enacted Section 6 and Section 20 of the Clayton Act*

We will not enter into an exhaustive analysis of the course of the debates on this Act. The debates appear in 51 Congressional Record. Section 6 of the Clayton Act is as follows:

> "Sec. 6. *That the labor of a human being is not a commodity or article of commerce.* Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural or horticultural organizations, instituted for the purpose of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; *nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws.*" (Italics supplied)

When this section was reported to the House by the Committee, it did not contain *either the last clause or the first sentence.* The last clause was adopted by the House and the first sentence by the Senate. The debates in the House which preceded the adoption of the last clause are therefore of no value in ascertaining the general agreement on purpose with relation to the last clause. And similarly, the debates in the Senate which preceded the adoption of the first sentence are of no aid in ascertaining the general agreement on purpose with respect to that sentence. Thus, for example, Representative Floyd of Arkansas, said,

> "We are taking them out from the ban of the pres-

ent law to the extent that in the future they cannot be dissolved as unlawful combinations. Their existence is made lawful and they are given a legal status." (51 Cong. Rec. *9160*).

But this statement was made before the last clause was even before the House. The House added the last clause, called the Webb Amendment, to perfect the section on the demand that without it, the section would not fulfill its intended purpose of exempting labor unions from the application of the Sherman Act. The course and general trend of the debates in the House confirm this. See statements of Representatives and *particularly the statement of Rep. Henry, Chairman of the Rules Committee because he was really the author and sponsor of the clause.* He said,

> "In my judgment, when Congress was dealing with 'combinations in restraint of trade' it never intended that the law should apply to labor organizations or farmers' organizations without capital and not for profit. *The courts took a different view of it and construed the Act as it was never intended that it should be interpreted * * * We are now about to correct that error, and make it plain and specific, by clear cut and direct language that the Anti-Trust Laws against conspiracies in trade shall not be applied to labor organizations and farmers' unions.*" (51 Cong. Rec. 9540) (Italics supplied)

Many Representatives, throughout the discussions, joined Representative Henry in declaring that at last the grave error was to be corrected in language which could not be misunderstood. See statements of Konop, 51 Cong. Rec. 9545; Quinn at 9546; Towner, at 9548, Barkley at 9553

Crosser at 9556; Casey at 9557; Lewis at 9565; LaFollette at 9573."

The Webb Amendment was adopted by a vote of 207, *and no nays.* (51 Cong. Rec. 9567). The bill was adopted by the House and went to the Senate. The Senate Judiciary Committee reported Section 6 practically in the same form as it was passed by the House.

The Senate added the first sentence *to make even more certain that the Sherman Act could not be applied to labor unions and farmers' organizations.* The first sentence is

> "That the labor of a human being is not a commodity or article of commerce."

This was known as the Culbertson Amendment. It appears in 51 Cong. Rec. 14590. It was deliberately written in on the theory that this would remove labor unions from the field of federal power. That sentence appeared in an amendment offered by Senator Cummins because he believed that the last clause of the section did not accomplish the intended purpose. (51 Cong. Rec. 14585). His amendment was defeated but Senator Culbertson, Chairman of the Judiciary Committee, proposed that this famous first sentence be added to the section and this was done. (51 Cong. Rec. 14610).

In *Duplex Printing Press Co. v. Deering*, 254 U. S. 443, the Court construed Section 6 of the Clayton Act, and held that all it meant was that the anti-trust laws should not be construed to forbid members of such organizations

"from lawfully carrying out their legitimate objects". Cf. *Senate Report No. 698*, 63rd Congress, 2nd Session, at p. 46.

The Court relied upon *Loewe v. Lawlor* as authority that a secondary boycott which directly involved interstate sales is within the Sherman Act. Having placed the activity there involved in the niche of secondary boycotts, directly involving interstate commerce, the Court, without considering the substantive problem as to whether there was a "combination or conspiracy in restraint of trade", found a violation on a mere finding of jurisdiction. The Court did not "stick to the exact words used," (Cf. Holmes, J., in the *Northern Securities Case*) but said that the prohibition of the Sherman Act

> "must be given full effect irrespective of whether the things prohibited are lawful or unlawful at common law * * *". (p. 466)

Cf. *Standard Oil Case*, *supra*, in which the broad construction of the Act to include more than the common law meaning of "combinations in restraint of trade" was rejected, and in which the *Freight Association and Joint Traffic Cases*, in this respect, were expressly "limited and qualified" (pp. 67 68); and also *Cline v. Frink*, *supra*; *Lanzetta v. New Jersey*, 306 U. S. 451, 453.

*The construction of Section 20 of the Clayton Act given by the Court does not concern us now because, as this Court said in The New Negro Alliance v. Sanitary Grocery Co., 303 U. S. 552, 562; the Norris-LaGuardia Act, (Act of March 23, 1932, C. 90, 47 Stat. 70; 29 U. S. Code, Section 101, et seq.), "obviated the results of judicial construction" of that section and "rendered specifically described conduct lawful". Lauf v. Shinner, 303 U. S. 323. See also Senate Report No. 163, 72nd Congress, First Session; House Report No. 669, 72nd Congress, First Session.

The dissenting opinion of Brandeis, J. in the *Duplex* ase did not deal with the propriety of this construction, it met the issue, as it was presented by the majority, as e of private tort law and stated a vigorous justification bring the case within the rule of reason.

Again, in the *Stone Cutters Case, supra*, decided *April 1927*, the majority relied upon the broad construction the Act. The case of *Cline v. Frink* was decided on *ay 31, 1927* and in it the court said that the terms of the t must be held to their common law meaning.

In every case involving the Sherman Act, there are two oblems involved, one of jurisdiction and the other of bstance. The failure to differentiate these two problems stinguishes most of the significant labor cases decided the Court.

Is it the law that the Sherman Act shall receive a broad nstruction, if a labor union is involved, and a narrow mmon law interpretation if a business combination is volved? The evidence disclosed by a review of the cases ems to lead to that conclusion.

It is respectfully submitted however that the statute ould not be differently construed dependent upon the kind defendant involved. The statute should be held to its mmon law meaning in all cases and under such construc- n, labor unions are not within the statute and the de- ndant union in this case cannot be held liable under it.

B. Even if the Sherman Act Is Applicable to Labor Unions, and their Activities, that Act Has Not Been Violated by the Respondents because the Local Strike Activities Were Not Part of a Conspiracy directly Aimed at Interstate Commerce nor Vitalized by an Intent To Monopolize the Supply of the Article Entering and Moving in Interstate Commerce or To Fix the Price of it in Interstate Markets

This contention is made independently of the foregoing argument and is unqualifiedly supported by all of the former decisions. The "secondary boycott" cases are not apposite here. In *Loewe v. Lawlor*, 208 U. S. 274, the decision was on the bill of complaint and demurrer. The gist of the case was that there was a conspiracy which embraced the entire field of the manufacture of fur hats in the United States, and its alleged purpose was to compel unionization of all of the factories so that the union could subject them to its control, and further, that the

> "conspiracy or combination was so far progressed that out of eighty-two manufacturers of this country * * * seventy had accepted the terms." (p. 305)

On the second appeal in this case, *Loewe v. Lawlor*, 235 U. S. 522, Holmes, J. said,

> "The substance of the charge is that the plaintiffs were hat manufacturers who employed non-union labor, * * * that *in pursuance of a general scheme* to unionize the labor employed by manufacturers of fur hats *(a purpose previously made effective against all*

but a few manufacturers) * * * the defendants caused * * * a boycott." (p. 533)* (Italics supplied)

The circulation of the unfair list and the secondary boycott was in aid of the general scheme. The same view was preserved in the *Duplex Case* and the *Stone Cutters Case*. But the effect on these cases of the Norris-LaGuardia Act has already been discussed and it is now beyond dispute that the activities of the unions in those cases have been rendered lawful.

Local Activities of Employees on Strike Are not within the Reach of the Federal Power

The facts of this case establish that there occurred a sit-down strike in the petitioner's mill. The case is squarely within the decisions of this Court in the *First Coronado Coal Case*, 259 U. S. 344; *United Leather Workers v. Herkert & Meisel*, 265 U. S. 457; and *Levering & Garrigues v. Morrin*, 289 U. S. 103.

In the *First Coronado Coal Case* this Court held that mining was not interstate commerce, that the power of Congress did not extend to its regulation as such and that the activities there involved—a local strike—did not bring them within the broad provisions of the Anti-Trust Act. Chief Justice Taft found that the strike there involved was

> "local in its origin and motive, local in its waging, and local in its felonious and murderous ending." (p. 412)

*In Santa Cruz Fruit Packing Co. v. National Labor Relations Board, 303 U. S. 453, 465, the court pointed out that "the conspiracy * * * was held to fall within the Federal Anti-Trust Act because it was aimed at the destruction of the interstate trade in the manufactured hats."

In *United Leather Workers v. Herkert & Meisel*, 265 U. S. 457, the Court rejected a claim that the strike there involved and carried on through illegal picketing and intimidation of workers was in violation of the Anti-Trust Act, despite the fact that 90% of the output of the plant was normally shipped in interstate commerce and pointed out that the natural, logical and inevitable consequences of the contention there made (similar to that of the petitioner here)

> "will be that every strike in any industry or even in any single factory will be within the Sherman Act and subject to federal jurisdiction, provided any appreciable amount of its product enters into interstate commerce * * * We cannot think that Congress intended any such result in the enactment of the Anti-Trust Act, or that the decisions of this Court warrant such construction."

This Court held in that case, at p. 471, that there was no such intent as is required to make out a violation of the Anti-Trust Act nor were the necessary effects upon interstate commerce such as

> "to enable those preventing the manufacture to monopolize supply, control its price, or to discriminate as between would-be purchasers."

The Court held further, p. 471, that

> "the mere reduction in the supply of an article to be shipped in interstate commerce by *illegal or tortious prevention of its manufacture* is ordinarily an indirect and remote obstruction to that commerce." (Italics supplied).

See also *Levering & Garrigues v. Morrin*, 289 U. S. 103 and *Industrial Association v. United States*, 268 U. S. 64.

In *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, this Court reviewed the labor cases which involved the Anti-Trust Act, to show the breadth of the federal power under the commerce clause and the conditions under which the federal power had been exercised with relation to the activities of employees engaged in production, and in this connection, said:

"Upon the same principle, the Anti Trust Act has been applied to the conduct of employees engaged in production. *Loewe v. Lawlor*, 208 U. S. 274, *Coronado Coal Co. v. United Mine Workers, supra; Bedford Cut Stone Co. v. Stonecutters Association*, 274 U. S. 37. See, also *Local 167 v. United States*, 291 U. S. 293, 297; *Schechter Corporation v. United States, supra.* The decisions dealing with the question of that application illustrate both the principle and its limitation. Thus, in the *First Coronado Case*, the Court held that mining was not interstate commerce, that the power of Congress did not extend to its regulation as such, and that it had not been shown that the activities there involved—a local strike—brought them within the provisions of the Anti-Trust Act, notwithstanding the broad terms of that statute. A similar conclusion was reached in *United Leather Workers v. Herkert, supra, Industrial Association v. United States, supra*, and *Levering & Garrigues Co. v. Morrin*, 289 U. S. 103, 107. But in the *First Coronado Case*, the Court also said that 'if Congress deems certain recurring practices, though not really part of interstate commerce, likely to obstruct, restrain or burden it, it has the power to subject them to national supervision and restraint.' 259 U. S. p. 408. And in the *Second Coronado Case* the Court ruled that while the mere reduction in the sup-

ply of an article to be shipped in interstate commerce by the illegal or tortious prevention of its manufacture or production is ordinarily an indirect and remote obstruction to that commerce, nevertheless when the intent of those unlawfully preventing the manufacture or production is shown to be to restrain or control the supply entering and moving in interstate commerce, or the price of it in interstate markets, their action is a direct violation of the Anti-Trust Act.' 268 U. S. p. 310. And the existence of that intent may be a necessary inference from proof of the direct and substantial effect produced by the employees' conduct. *Industrial Association v. United States*, 268 U. S. p. 81. What was absent from the evidence in the *First Coronado Case* appeared in the *Second* and the Act was accordingly applied to the mining employees." (pp. 39-40). (Italics supplied)

This Court referred to those cases where the Anti-Trust Act had been applied *merely to show that the federal power had been deemed broad enough to include local activities but only when they were part of a conspiracy with intent to restrain or control the supply or to fix prices in interstate markets.*

In the *Second Coronado Coal Case*, 268 U. S. 295, this Court held that the additional evidence produced in the second trial showed an intent "to restrain and control the supply of coal moving in interstate commerce," and applied the Anti-Trust Act to the conspirators. *It was the suppression of competition in the interstate markets for the purpose of maintaining prices which constituted the conspiracy in restraint of commerce and not the violent strike activities which brought the Anti-Trust Act into play in that case.*

In distinguishing the *First Coronado Case*, the Court aid,

"The purpose of the destruction of the mines was to stop the production of non-union coal and prevent its shipment to markets of other states than Arkansas, where it would by competition tend to reduce the price of the commodity and affect injuriously the maintenance of wages for union labor in competing mines * * *".

nd further,

"In the view we took of the evidence then before us we had only the isolated circumstances of the reduction in shipment of the normal product of the four mines destroyed, without other evidence to show an actual intent and plan on the part of the defendants thereby to restrain interstate commerce * * *" (pp. 309, 310).*

In the case at bar the requisite intent was *neither alleged*. . pp., 11, 21-22), *nor proved*. There was nothing more than ncerted action to unionize the mill by means of a sit-down ike with the intent and purpose of preventing the petiner from carrying on its business. As this Court said in *Herkert Case*.

"It is true that they were, in this labor controversy,

*In Santa Cruz Case, supra, the Court commented on the Second Coronado Case, to show that the federal power does extend and reach labor disputes if they constitute a source of injury interstate trade and said,

"And in the Second Coronado Case (1925), 268 U. S. 295, 310, the Court held that the evidence was adequate to show that the purpose was to stop the production of non-union coal and prevent its shipment to markets of other states, and that a combination to that end would constitute a direct violation of the Anti-Trust Act." (p. 465)

hoping that the loss of business in *selling* goods would furnish a motive to the complainant to yield to demands in respect to the terms of employment." (Italics supplied)

It is respectfully submitted that the facts in this case do not make out a violation of the Sherman Anti-Trust Act and therefore the district court had no jurisdiction.

2. The Jury Did not and Indeed Could not Find the Requisite Intent. The Jury Found an Intent To Conduct a Sit-down Strike

The Circuit Court of Appeals in reversing the judgment entered in the District Court committed no error. Sufficient has been said herein to show that there was no conspiracy with intent to monopolize the supply of hosiery entering and moving in interstate commerce or to fix the price of it in the interstate markets. The case was presented to the jury on the erroneous theory that the intent to conduct a sit-down strike in a mill which normally receives raw materials from outside the state and ships 85% of its merchandise into other states raises a conclusive presumption of intent "to restrain commerce". No proof was adduced of a conspiracy with intent to unduly restrict competition in interstate hosiery markets by monopoly of supply or by price fixing, nor were the consequences of the sit-down strike such as to compel an inference of such intent.

The Apex Hosiery Company produced about 100,000 dozen pairs of hosiery per month, in an industry which had a total national sale in the year 1937 of approximately forty million dozen pairs of hosiery, and which industry had at that time a productive capacity of about forty-eight

million dozen pairs. The stoppage of production at Apex for the period of the sit-down strike had no effect whatsoever upon competitive opportunities in the hosiery markets, or the prices of hosiery in interstate markets, nor was the available supply of hosiery curtailed whatsoever. As a matter of fact, more hosiery was sold during 1937 than during 1936. (R. 1261).

It is plain therefore that "the combination was not such that by reason of the intent of the conspirators or the inherent nature of their acts, *public interest was prejudiced by unduly restricting competition or obstructing trade. Appalachian Coals, Inc., supra. Nash v. United States, supra.*" (R. 1413, Opinion of Circuit Court). (Italics supplied)

The petitioner contends however that the refusal by the respondent Leader to permit entry into the mill for the purpose of removing hosiery so that it could be shipped against orders constitutes the crucial fact of sufficient substance to turn the entire case into a conspiracy "in restraint of commerce".

Although the petitioner, states that the union respondent repeatedly refused to grant the petitioner's request for permission to remove and ship $800,000 of *finished merchandise* from its factory, the record does not support that statement. The record shows that there was on hand in the plant on May 6, 1937, the date of the beginning of the strike, a total of 130,000 dozens of *finished and unfinished* merchandise (R. 145). *Of this, only 25,452 dozens were finished.* (R. 518). Furthermore, the respondent Leader, not the union, uttered the refusal (R. 620). There is no evidence that the union actually authorized the alleged statement of refusal or ratified Leader's alleged refusal, or that it had actual knowledge of it. (Section 6 of *Norris-LaGuardia Act*).

However, it is clear that this is not a violation of the Anti-Trust Act.

In the *First Coronado Coal Case*, the following appears at p. 411:

> "The circumstances that a car loaded with coal and billed to a town in Louisiana was burned by the conspirators has no significance upon this head. The car had been used in the battle by some of Bache's men for defense. It offered protection and its burning was only a part of the general destruction."

See also *Industrial Association of San Francisco v. United States*, 268 U. S. 64, referred to in the opinion of the Circuit Court below at R. 1414.

If it is not a violation to engage in unlawful picketing to prevent the normal operations of a factory which customarily ships 85% of its product into other states, and if it is not a violation to burn a "car loaded with coal and billed to a town in Louisiana", then surely the refusal by Leader does not constitute a violation. It cannot be said that this refusal by Leader prejudiced the public interests by unduly restricting competition or unduly obstructing the course of trade; *Sugar Institute, Inc. v. United States*, 297 U. S. 553; *Appalachian Coals, Inc. v. United States*, 288 U. S. 344.

Moreover, the damages the petitioners sought to recover did not result from this refusal. The petitioner sought to recover damages for injury to its property, loss of overhead charges and estimated profits it claimed it would have earned had it operated its plant. *It did not prove any loss resulting from the refusal.*

But, more fundamentally than this, since this is an action

for damages under the Act, the burden is upon the petitioner to prove:

(a) That there has been a violation of the Anti-Trust Act; and

(b) That the damages which it sustained resulted proximately from the violation.

It must be made clear at the very outset that an action under Section 4 of the Clayton Act or Section 7 of the Sherman Act differs from a common law action for injuries sustained by reason of a wrongful act, and that obviously the recovery permitted is limited to such damages which result proximately from the forbidden acts.

If the plaintiff has been injured, but not by reason of anything forbidden in the Anti-Trust Act, he cannot recover under this Section. Manifestly, for the injury which it has sustained, the plaintiff may recover under the local laws and in the proper forum, but it cannot utilize the Sherman Act and make it a substitute for the appropriate action available to it.

In an action for treble damages for violation of the Anti-Trust Act, the declaration itself must allege facts from which the court can determine that there has been a violation of Section 1 or Section 2 of the statute, with resultant damage proximately caused thereby, to the plaintiff.

The test of a violation of the Anti-Trust Act, as we have seen, is whether or not the combination or conspiracy was carried on with the intent or necessary effect of monopolizing the supply of the commodity moving in interstate commerce, or fixing prices of the commodity in interstate markets. The only kind of damage which can proximately result from such a combination, contract or conspiracy is

such as would prevent the individual, seeking to recove damages, from purchasing goods upon the market becaus of the monopoly of supply, or at prices which, had they n been fixed by the conspirators, would have permitted th plaintiff to conduct his business at a profit.

The damages which the Apex Company seeks to recove in this case are not the special kind of damages contem plated by the Act. The damages which the petitioner seek to recover in this case are such as resulted from a trespas under the common law, and to recover them the petitione may bring an action in the state courts.

In *Wilder Manufacturing Co. v. Corn Products Compan* 236 U. S. 165, the Court said:

> "Founded upon broad conceptions of public policy the prohibitions of the statute were enacted to preven *not the mere injury to an individual which would aris from the doing of the prohibited acts; but the harm to the general public which would be occasioned by th evils which it was contemplated would be prevente* and hence, not only the prohibitions of the statute, bu the remedies which it provided were co-extensive wit such considerations." (Italics supplied)

The petitioner is obviously trying to convert acts which are local offenses into crimes under the Sherman Act. See *Nash v. United States*, 229 U. S. 373.

Returning to the petitioner's contention that the Circui Court erred in reversing because the jury found intent and such finding is amply supported by the evidence.

It is abundantly clear that the evidence supports no find ing of the requisite intent. And it is equally true that th

jury made no such finding. The following is ample proof of this unequivocal statement:

(a) The case was tried upon the erroneous theory propounded by the petitioner and adopted by the Circuit Court in its former opinion reported in *Apex v. Leader*, 90 F. (2d) 155, that *a sit-down strike raises a conclusive presumption of an intent to restrain commerce.*

(b) The learned Trial Judge refused to charge the jury in accordance with the defendants' points for charge as to the meaning of "restraint of commerce" as that term has been interpreted by this Court. (R. 1341, 1350)

(c) The special findings of the jury do not contain a question of that nature.

(d) The learned Trial Judge submitted the question of intent to conduct a sit-down strike and the jury found that the Union defendant did intend that kind of a strike. (R. 1363)

(e) Even if the court had submitted the question of intent under proper explanatory instructions to the jury, there is no evidence to support a finding of the specific intent required under the *Second Coronado Coal Case.*

(f) In his charge to the jury, the learned Trial Judge said:

> "The facts involved in this case have been ruled upon by the Circuit Court of Appeals in that regard, and the law as declared by the Circuit Court of Appeals *requires* me to say to you that if you find the defendants did the things which they are charged with doing, then, *without further proof of their intent,* you may find from those facts that the defendants did intend to re-

strain interstate commerce." (R. 1314-1315). (Italics supplied).

The learned trial judge made this point clear in his opinion denying the motion to set aside the judgment. He said:

> "its decision can only mean, that, as a matter of law, the requisite intent is conclusively presumed from the seizure of the plant by the defendants and the consequent stopping of production and shipment of goods." (R. 1389-90).

Sufficient has been said to show conclusively that the activities of the respondents in this case were not a part, nor in aid, of a general scheme or combination directed at interstate commerce or trade in hosiery for the purpose of securing control of this business, or the supply of hosiery, in order thereby to fix prices. We have already commented upon the difference between the decisions in the *First Coronado* and *Second Coronado Cases*. But we suggest that even the doctrine upon which the *Second Coronado Case* turned, may not now be applied to a similar fact situation, let alone to the facts in this case, in view of the effect on it of the National Labor Relations Act (Wagner Act)* and the public policy underlying that statute.

(a) The Economic Relation between the Sherman Act and the Wagner Act

The Sherman Act was designed to further the interests of the public and to protect it from the dangers inherent in monopolies. But it is now part of history that the Sherman Act really had failed to achieve its fundamental purpose.

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*Act of July 5, 1935, c. 372, 49 Stat. 449.

In 1933 the national policy shifted away from the tech-
que of the anti-trust acts. As a matter of fact, the National
dustrial Recovery Act* was a relaxation of the Anti-
rust Acts and permitted industry to control production,
y prices, etc. Section 7 (a), the actual forerunner of the
agner Act, was the new method to deal with massed
pital. It was predicated upon the belief that the national
come would be more equitably distributed amongst the
ople only if equality of bargaining power existed between
ganized capital and organized labor. In a real sense, the
agner Act constitutes a recognition of the fact that the
erman Act could not achieve the purpose, and that the
ly way to achieve it was to permit the growth of labor
ganizations.

Senator Wagner, in his statement in support of the Na-
nal Labor Relations Act, then known as Bill S. 1958,
fore the Senate Committee, expressed this same thought
follows:

"It is designed to further the equal balance of op-
portunity among all groups that we have always at-
tempted to preserve, despite the technological forces
driving us toward excessive concentration of power
and wealth. The first of these attempts that has con-
temporary significance was the Sherman Anti-Trust
Law, enacted in 1890 to protect the laborer, the small
business man and the consumer from the dangers of
unregulated monopolies of capital. The failure of that
noble undertaking demonstrates the impossibility of
trying to swim against the currents of economic de-
velopment. The early dissolution of the Standard Oil
Company was more spectacular than realistic. The rule
of reason enunciated in that famous case soon came

*Act of June 16, 1933, c. 90, 48 Stat. 195.

to mean that the courts found little reason in the anti-trust laws * * * (p. 32)." *Hearings before the Committee on Education and Labor, U. S. Senate 74th Congress —1st Session on S. 1958*, in March 1935. See also *Senate Report No. 573, of the 74th Congress, 1st Session*, pp. 3-4; *House Report No. 1147, 74th Congress, 1st Session*, p. 10.

It is obvious that the Wagner Act was formulated to complement the Anti-Trust Act. In view of this, how can it be said that the Sherman Act, though it is unable to fulfill its fundamental purpose, has vitality against labor organizations, which Congress believed would be able to achieve that same purpose through the process of collective bargaining?

In the process of collective bargaining, it is necessary that both sides have equality of bargaining power, and as far as a labor organization is concerned, its bargaining power may very well depend upon the strike and the boycott. How can it be said that employees may organize and form unions for the purpose of bargaining collectively with their employer, but that, if they engage in a strike, which, to the degree that it is successful, necessarily stops production, they come within the domain of the Sherman Act?

The principle of collective bargaining requires that the organization extend its influence throughout the entire industry. The tendency today is for collective bargaining to be carried on by associations of employers, constituting an entire industry or a major portion thereof, on the one side; and a labor organization, representing a very substantial portion of the workers on the other side. See *American Federation of Labor v. National Labor Relations Board*,

—U. S.—, decided January 2, 1940; see also 7 N. L. R. B. 1062.

In *American Steel Foundries v. Tri-City Central Trades Council*, 257 U. S. 184, (1921), Chief Justice Taft stated the economic justification of labor unions as follows:

> "To render this combination at all effective employees must make their combination extend beyond one shop."

It is therefore clear that the doctrine of the *Second Coronado Case* has been overcome by the policy underlying the *Wagner Act*.

And further, even though a union may seek to protect its standards by attempting to organize the workers of non-union shops in the same industry, as the union did in the *Second Coronado Case*, or, by demanding an increase in wages or a diminution of hours, or improved working conditions, compel an increase in price,—this is not the same thing as price fixing, and is not a social evil, because by obtaining their demands, the purchasing power of a large body of workers is thereby improved, consumption of goods is increased, and the income from industry is more widely and more equitably distributed. And this is in the public interest.

One further word on this point.

Section 13 of the *National Labor Relations Act* specifically provides:

> "Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike."

This section appears in that Act, despite the finding in

Section 1 that strikes materially affect, *restrain*, and control the flow of goods in the channels of commerce.

Congress must have recognized that strikes or boycotts would occur and that inconvenience to the public would flow from such activities. Nevertheless, Congress did not deem it wise to regulate strikes. Congress balanced the benefits to the public flowing from collective bargaining in the form of more equitable distribution of the national income, with the inconveniences resulting from strikes, and selected the method of collective bargaining.

In any consideration of the application of the Sherman Act to a labor case, the principle of collective bargaining and the right to engage in concerted activities by employees must be considered. It cannot be presumed that the more recent Wagner Act can be utilized to strengthen the Anti-Trust Act against the very organizations upon which national policy relies to achieve the socially desirable ends which the Sherman Act failed to bring about.

And yet the argument of the petitioner necessarily leads to such a conclusion. But it is clear that the argument of the petitioner is based upon several erroneous foundations.

(a) It fails to distinguish between the questions involved in a determination of the *constitutionality* of an Act of Congress, under the commerce clause of the constitution, and those involved in a determination of the *application* of an Act of Congress.

(b) It assumes that the commerce clause of the constitution has been expanded by the decisions validating the Wagner Act.

(c) It assumes an equivalence between the term of art "combinations or conspiracies in restraint of trade or commerce" and the term "affect commerce".

The National Labor Relations Act and the Decisions this Court Upholding its Constitutionality Have not anded the Meaning of "Commerce" nor Extended the Application of the Anti-Trust Act

he argument advanced by the petitioner proceeds on assumption that by holding the National Labor Rela- s Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 S. C. A., Sec. 151 et seq.) constitutional and applicable ctivities in manufacturing plants, the federal power been enlarged, the meaning of "in restraint of com- ce" changed, and the application of the Anti-Trust Act anded, so that now if unfair labor practices in a plant as Friedman-Harry Marks Clothing Co.[1] or Fainblatt within the federal power, because they "led or tend to to a labor dispute burdening or obstructing com- ce", then a strike which actually stops production and flow of goods into and out of the plant must necessarily within the federal power under the Sherman Act.

he fallacies which infect this contention are many. In first place the problems involved in a determination of *constitutionality* of an Act of Congress are different n the problems involved in a determination of the *appli- on* of an Act of Congress.

lthough Congress is constitutionally empowered to pro- commerce from recurrent local practices which affect mmerce directly, it is not incumbent upon Congress to ch all the evils within its field of action. The National or Relations Act cases merely affirmed the constitu ality of that Act upon a well established principle rly set forth in many cases.

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[1] National Labor Relations Board v. Friedman-Harry Marks thing Co., 301 U. S. 58.

In the *First Coronado Case, supra*, the court in denying that the Anti-Trust Act could be applied to a local strike said at p. 408

> "if Congress deems certain recurring practices, though not really part of interstate commerce, likely to obstruct, restrain or burden it, it has the power to subject them to national supervision and restraint."

In the very case relied on by the petitioner, namely *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, 39, 40, the court reiterated the principle upon which Congress could constitutionally deal with local activities.

The same argument now advanced by the petitioner in this case was rejected by this Court in the *Herkert case, supra*, as follows:

> "The cases of *Stafford v. Wallace*, 258 U. S. 495 and *Chicago Board of Trade v. Olsen*, 262 U. S. 1, are also supposed in some way to sustain the view that a strike against the manufacture of commodities intended to be shipped in interstate commerce, is a conspiracy against that commerce. What those cases decided was that when Congress found from investigation that more or less constant abusive practices in a course of business usually within state police cognizance, threaten to obstruct or unduly to burden the freedom of interstate commerce, it could by law institute supervision of such course of business in order to prevent the abuses having such effect. As said in *Stafford v. Wallace* (p. 520) 'The *reasonable fear by Congress* that such acts usually lawful and affecting only intrastate commerce when considered alone, will probably, and more or less

constantly, be used in conspiracies against interstate commerce, or constitute a direct or undue burden on it, expressed in this remedial legislation, *serves the same purpose as the intent* charged in the *Swift* indictment, to bring acts of a similar character into the current of interstate commerce for federal restraint.'" (Italics supplied)

The critical words in the National Labor Relations Act "affect commerce". *Jones & Laughlin Case, supra,* 31)

"Congress did not attempt to deal with particular instances. It created for that purpose the National Labor Relations Board. In conferring authority upon that Board, Congress had regard to the limitations of the Constitutional grant of Federal power. Thus, the 'commerce' contemplated by the Act * * * is interstate and foreign commerce. The unfair labor practices which the Act purports to reach are those *affecting that* commerce. * * * And whether or not a particular action in the conduct of intrastate enterprises does affect that commerce in such a close and intimate fashion as to be subject to Federal control is left to be determined as individual cases arise."

Consolidated Edison Co. v. National Labor Relations Board, 305 U. S. 195, 222.

The question in the *Consolidated Edison Case* was really ether the Board had exceeded the limits of Federal wer, that is—whether the employer and its employees re within such relation to interstate commerce that an fair labor practice in that plant would "affect comrce".

The principle was made even more explicit in *National*

Labor Relations Board v. Fainblatt, 306 U. S. 601. In that case, the Court held:

> "The power of Congress extends to the protection of interstate commerce from interference or injury due to activities which are wholly intrastate." (p. 605)

The point at issue in that case was whether or not, in view of the small size of the employer's business, the Federal power could be extended over it. The Court pointed out in Note No. 1 that the power of Congress, whether exerted under the Wagner Act or any other Act, extends to those intrastate activities which, if permitted, would result in restraint of interstate commerce. *As illustrative of the extent of Federal power*, the Court cited the *Second Coronado Coal Case*, and the *Stone Cutters Case*. These cases were cited merely to illustrate that the Federal power under the Sherman Act, may extend to activities which are wholly and purely intrastate.

The Court did not mean, and no such meaning can be extracted from these latter Labor Board decisions, that the meaning and application of the Sherman Act has been altered.

In the Labor Board cases, since the statute leaves to the Board, subject to judicial review, the question of jurisdiction, the test of the application of the Act to a particular employer is the existence "of a relationship of the employer and his employees to the commerce, such that, to paraphrase Section 10 (a) in the light of constitutional limitations, unfair labor practices have led or tend to lead 'to a labor dispute burdening or obstructing commerce.'" (p. 608). *N. L. R. B. v. Fainblatt, (supra)*:

> "It is a familiar principle that acts which directly

burden or obstruct interstate or foreign commerce, or its free flow, are within the reach of the governmental power. * * * Whether or not particular action does affect commerce in such a close and intimate fashion, as to be subject to Federal control and hence lie within the authority conferred upon the Board, is left by the statute to be determined as individual cases arise. *We are thus to inquire whether in the instant case, the Constitutional boundary has been passed.*" (Italics supplied)

Jones & Laughlin Case, 301 U. S. 1, (p. 31-2).

The same problem concerned the Court in the *Santa Cruz Case*, 303 U. S. 453. The Employer in that case contended that in view of the nature of its business, it did not lie within the field of Federal power. In answer to that contention, the Court said:

"The *power of Congress* extends not only to the making of rules governing sales of petitioners produced in interstate commerce, as for example with respect to misbranding under the Federal Foods and Drug Act, or with respect to forbidden discrimination in price under the Clayton Act, but also to the *protection of that interstate commerce from burdens, obstructions and interruptions, whatever may be their source.* Second Employers' Liability Cases, 223 U. S. 1, 51. The close and intimate effect which brings the subject within the reach of Federal power may be due to activities in relation to productive industry, although that industry, when separately viewed, is local. It is upon this *well established principle* that the constitutional validity of the National Labor Relations Act has been sustained. National Labor Relations

Board v. Jones & Laughlin, 301 U. S. 1, 38." (Italics supplied)

Santa Cruz Fruit Packing Co. v. National Labor Relations Board, 303 U. S. 453.

It is too clear for further argument that, whereas the Sherman Act is directed at conspiracies or combinations which impair the freedom of competition in interstate markets and whereas local activities come within the federal power under that Act *only when they form part of a plan involving monopoly of supply or price fixing*, the National Labor Relations Act is aimed at local activities which *affect commerce*.

Activities which directly and substantially "restrain" commerce, under the Anti-Trust laws are different in nature from unfair labor practices which "affect commerce" under the National Labor Relations Act.

In *Blankenship v. Kurfman*, 96 F. (2d) 450, 456, CCA 7th, a similar argument was disposed of by the Court as follows:

> "The recent decisions in cases under the National Labor Relations Act * * * are instructive for the purpose of determining whether certain activities *affect commerce*. These cases do not involve problems of determining the existence of a conspiracy or combination *in restraint of commerce*." (Italics supplied).

The term "in restraint of commerce" is a term of art well known in the law for generations before the Anti-Trust Act was passed. Its nature has been made clear in the decisions by this court. The activities which constitute a conspiracy "in restraint of commerce" are qualitatively different from activities which merely "affect commerce".

The petitioner seized upon the language in the opinion of Chief Justice Hughes in the *Jones & Laughlin Case*, *supra*, wherein it was said that the effect on commerce in that case would be direct and immediate and not indirect and remote. We have already pointed out the principle under which the National Labor Relations Act was declared constitutional, and that under that principle, the Congress may legislate with reference to all matters which it finds affect commerce directly. There has been no departure from the Constitution.

In the *Santa Cruz Case*, *supra*, the Court clearly stated that there is a limitation to the exercise of Federal power by Congress over intrastate activities and that the limit of Federal power is referred to by the use of the antithesis *direct* and *indirect*, and also remote and close. The Court said:

> "* * * it must appear that there is a close and substantial relation to interstate commerce in order to justify the Federal intervention for its protection * * * The expansion of enterprise has vastly increased the interests of interstate commerce, but the Constitutional differentiation still obtains * * * To express this essential distinction, 'direct' has been contrasted with 'indirect', and what is 'remote' or 'distant' with what is 'close and substantial' * * * In maintaining the balance of the Constitutional grants and limitations, it is inevitable that we should define their application in the gradual process of inclusion and exclusion." (p. 466)

In other words, the Court has pointed out that, although the constitutional validity of legislation involving intrastate activities depends upon a legislative finding that such activities, as a class, directly affect commerce, in the applica-

tion of such legislation, it must appear as a matter of fact that the particular case comes within the area as to which Congress has enacted valid legislation.

Implicit in the petitioner's argument, is a blending of the word "restraint", which appears in the declaration of policy in the National Labor Relations Act, and the word "restraint" as it appears in the terms contained in the Sherman Act. It has already been seen that the terms in the Sherman Act must be treated as parts of complete phrases. In the Sherman Act the inhibitions are directed against "*contracts in restraint of trade*" and "*combinations or conspiracies in restraint of trade*". But in addition to this, it is clear, that merely because the same word appears in two pieces of legislation, enacted by the same legislative body, it does not mean that the words are similar in their meaning or application. It has even been held by this Court in *Atlantic Cleaners & Dyers, Inc. v. U. S.*, *supra*, that *the same word contained in different sections of the same statute may have different meanings.* The Court in that case distinguished between the use of the word "trade" in Section 1 of the Sherman Act and the use of the same word "trade" in Section 3 of the Sherman Act, and said:

> "Section 1, having been passed under the specific power to regulate commerce, its meaning necessarily must be limited by the scope of that power; and it may be that the words 'trade' and 'commerce' are there to be regarded as synonomous * * * In passing Section 1, Congress could exercise only the power conferred by the commerce clause, but in passing Section 3, it had unlimited power, except as restricted by other provisions of the Constitution."

In summary on this point, it is respectfully submitted that the Circuit Court of Appeals, was entirely correct

ts conclusion that the effect on interstate commerce in case at bar was indirect and remote and in refusing to blish an equivalence between the terms "in restraint ommerce" and "affect commerce".

The Circuit Court Did not Err in Holding that a stantial Amount of the Commodity Must Be Involved in a Violation of the Anti-Trust Act

is respectfully submitted that the Circuit Court did err in reversing the judgment on the ground that e was no federal jurisdiction over the local strike ely because the Court went further and showed that e can be no violation of the Sherman Act unless the me of commerce involved is substantial.

nder the rule, as laid down by this Court, there could o price fixing unless the control of the supply was iciently substantial. Thus, for example, in *Appalachian ls, Inc. v. United States*, 288 U. S. 344, the Court, after sidering the chaotic conditions in the coal industry in area, which led to the formation of the combination, that there was no violation of the Sherman Act be- e the amount of coal controlled by the combination resented but 12% of the coal entering into the interstate ket east of the Mississippi. Since "*ample competitive rtunities*" existed in the interstate market, the Court that there was no violation.

U. S. v. Patten, 226 U. S. 525, the conspiracy was d at securing control of the total available cotton sup- for the purpose of enhancing the price of all buyers very market in the country.

s we have seen, the conspiracy in *Loewe v. Lawlor*, 208 . 274, was aimed at control of all of the manufacturing

establishments in the United States, and that at the time of the institution of the secondary boycott against the plaintiff, the conspiracy had been successful in securing control (as the Court viewed it) of 70 of the 82 manufacturers in the country. The amount of the hats involved in the conspiracy in that case was really the entire field of manufactured hats.

In the *Stonecutters Case*, the Court said,

> "the present combination deliberately adopted a course of conduct which directly and substantially curtailed or threatened thus to curtail the natural flow in interstate commerce of a *very large proportion of the building limestone production of the entire country* to the gravely probable disadvantage of producers, purchasers and the public; and it must be held to be a combination in undue and unreasonable restraint of such commerce within the meaning of the Anti-Trust Act as interpreted by this court." (Italics supplied).

In *Local 167 v. U. S.*, 291 U. S. 293, the Court found that the conspiracy dominated the entire industry and that the conspiracy

> "was not for a *temporary purpose* but to dominate a great and permanent business."

In *U. S. v. Brims*, 272 U. S. 549, the combination controlled the entire Chicago market, and excluded from entry into that market competitors from states other than Illinois.

In the *Second Coronado Case*, 268 U. S. 295, the Court deemed the production of non-union coal sufficient in amount so that if it did enter into competition with union

ed coal, it would tend to reduce the price of the com-
lity and affect injuriously the maintenance of wages
union labor in competing mines. The evidence in that
e, although not very clear on this point, was held *ade-*
te by the Court.

n *Standard Oil Company v. U. S.*, 283 U. S. 163, 169,
Court said:

"Thus appears that no monopoly of any kind, or re-
straint of interstate commerce, has been effected either
by means of the contracts or in some other way. In the
absence of proof that the primary defendants had such
control of the entire industry as would make effective
the alleged domination of a part, *it is difficult to see*
how they could by agreeing upon royalty rates control
either the price or the supply of the gasoline, or other-
wise restrain competition." (Italics supplied)

n *Glenn Coal Co. v. Dickenson Fuel Co.*, 72 F. (2d) 885,
A 4th, the Court, in commenting on the *First Coronado*
l Case, said:

"That an alleged conspiracy to suppress the pro-
duction of five thousand tons a week in a national pro-
duction of between ten million to fifteen million tons,
of a production in the particular district of 150 thou-
sand tons per week, was too negligible an amount to
have any appreciable effect upon the interstate price
of coal. Other cases holding that the public interest is
not involved unless the restraint of interstate com-
merce is substantial in amount are * * * (citing many
cases)."

t is indeed difficult to understand how the union in this
e can be held to have conspired to obtain control of the

national supply of hosiery or any part of it, merely because the respondent, Leader, refused to permit the petitioner to enter the plant for the purpose of removing finished merchandise. Nor is it possible to find such a purpose from the fact that the respondent union conducted a sit-down strike in the Apex Plant. The record shows conclusively that there was no lack of hosiery on the market during the year 1937, but in fact more hosiery was sold on the market than during the preceding year. There was no contract in restraint of commerce, nor was there any agreement in restraint of commerce amongst the participants in the sit-down strike, to carry out a scheme to control the entire industry against the public interest. Nor is there any evidence whatsoever to show that the sit-down strike in this case was part of any such conspiracy in restraint of commerce under the Sherman Act. The union in this case was not seeking by any means the control of the entire industry, or any part thereof, so as to control either the supply or the price of hosiery.

The petitioner, in its brief, relies upon *Steers v. U. S.*, 192 F. 1 (1911); *Patterson v. U. S.*, 222 F. 599, (1915); and *O'Brien v. U. S.*, 290 F. 185 (1923), in support of its contention that the amount of the commodity involved is immaterial.

The *Steers Case* involved a conspiracy or combination to control the tobacco supply in the entire area for the purpose of fixing its price and the interference of the shipment of four hogsheads of tobacco was merely the overt act in aid of the conspiracy.

The *O'Brien Case* relies upon the *Steers Case*, and was decided by the same Circuit Court of Appeals, despite the fact that the cases were entirely different. In that case, the Court held that the interference with the shipment of

e steel billet actually in transit was sufficient to make t a conspiracy in restraint of trade or commerce under e Sherman Act. The Court did not consider the question control of supply or price-fixing, but merely relied upon former decision in the *Steers Case*. It is respectfully bmitted that the *O'Brien Case* is in error.

In his dissenting opinion in the *Northern Securities Case*, *pra*, Justice Holmes said,

> "There is a natural feeling that somehow or other the statute meant to strike at combinations great enough to cause just anxiety on the part of those who love their country more than money, while it viewed such little ones as I have supposed with just indifference. This notion, it may be said, somehow breathes from the pores of the Act. Although it seems to be contradicted in every way by the words in detail * * * when a combination reached a certain size, it might have attributed to it more of the character of a monopoly merely by virtue of its size, than would be attributed to a smaller one." (p. 407)

Application of the Sherman Act Does Not Depend upon the Illegality of the Means

The petitioner has, in its brief, laid stress upon the vio- nce, which unquestionably occurred in this case. We, there- re, deem it advisable to point out that this Court has ap- ied the Sherman Act without regard to peacefulness or olence of the means employed by the combination.

In *Loewe v. Lawlor*, *Duplex v. Deering* and the *Stone- tters Case*, the Sherman Act was held violated, even ough the means were peaceful; whereas in the *First*

Coronado Coal Case, the violation of local law was more flagrant than in this case; and also in the *Herkert Case* the interference with production was accomplished by illegal means.

Consequently the illegality of the means is not an element in a case under the Sherman Act.

F. Conclusion

In conclusion, it is respectfully submitted:

(1) The Sherman Act does not apply to labor unions and this is in harmony with the legislative intent.

(2) Even if the Sherman Act does apply to labor unions and their activities, the respondents did not violate that Act. The activities here involved were purely local and the effects on interstate commerce were merely indirect, incidental and remote.

(3) The respondents entertained no intent to control the supply of hosiery moving in interstate commerce, nor did they seek to fix prices of hosiery on interstate markets. The activities here involved were not part of any plan or scheme to injure the public interests by suppressing competition, or restricting competition, or obstructing the course of trade.

(4) The jury did not, and indeed could not, find an intent to control or monopolize the supply of hosiery entering and moving in interstate commerce, nor an intent to fix the price of it in interstate markets.

(5) The object, intent and purpose of the respondents was to unionize the plant by means of a sit-down strike,—a purely local matter.

(6) The National Labor Relations Act and the decisions by this Court, sustaining its constitutionality and application, have not enlarged the scope of the commerce clause of the Constitution, nor changed the meaning of the term "combination in restraint of trade". There is no equivalence between the word "restraint" and that historical term of art.

Wherefore it is respectfully submitted that the judgment of the Circuit Court of Appeals in this case should be affirmed.

Respectfully submitted,

ISADORE KATZ,
Attorney for Respondents.

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In the

Supreme Court of the United States

OCTOBER TERM, 1939.

No. 638.

APEX HOSIERY COMPANY,

Petitioner,

against

WILLIAM LEADER and AMERICAN FEDERATION OF FULL FASHIONED HOSIERY WORKERS,

Respondents.

BRIEF ON BEHALF OF LABOR LAW COMMITTEE OF NATIONAL LAWYERS GUILD, *AMICUS CURIAE.*

LOUIS B. BOUDIN,
Chairman, Committee on Labor Law,
National Lawyers Guild.

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INDEX.

	PAGE
Statement	1
The Problems Involved	2

ARGUMENT.

I—The decision of the Court of Appeals was clearly right under the law as laid down by this Court previous to the enactment of the National Labor Relations Act, and the National Labor Relations Act has not extended the liability of respondents under the Sherman Act	3
II—The federal anti-trust laws are not applicable to labor disputes	4

POINTS.

PART ONE—The decision appealed from was clearly right under the decisions of this Court under the Sherman Act; and the decisions of this Court under the National Labor Relations Act have not had the effect of extending the applicability of the Sherman Act to Labor Disputes	8
POINT I—It is clear that but for the possible effect of the National Labor Relations Act this case would not come within the purview of the federal anti-trust laws	8
POINT II—The National Labor Relations Act has not expanded the meaning of interstate commerce, nor enlarged the operation of the anti-trust laws	13

PAGE

PART TWO—The anti-trust acts were not intended to apply to labor disputes; and if they were ever properly applicable to such disputes, they were made inapplicable by recent legislation..... 21

POINT III—"Labor Disputes" and "Labor Unions" Distinguished..... 21

POINT IV—The Sherman Act was not intended by Congress to apply to labor disputes; and is not applicable to labor disputes according to correct principles of statutory interpretation..... 22

POINT V—The Clayton Act was intended to definitely exclude labor disputes from the purview of the federal anti-trust laws..... 24

POINT VI—If the federal anti-trust laws have ever been applicable to labor disputes they were made inapplicable to such disputes by recent congressional legislation..... 27

(a) The Norris-LaGuardia Act..... 28
(b) The Anti-Racketeering Act..... 33
(c) The National Labor Relations Act..... 36

POINT VII—Some Activities and Decisions Distinguished..... 39

CONCLUSION—The federal anti-trust laws are not applicable to labor disputes. But whatever rule of the applicability of the federal anti-trust laws to labor disputes we may apply,—whether the rule contended for by us or that which was the accepted rule prior to the decisions of this Court under the National Labor Relations Act,—the decision of the Circuit Court of Appeals here under review was clearly right, and should be affirmed..... 41

CASES CITED

PAGE

Apex Hosiery Co. v. Leader, 20 Fed. Supp. 138.....3, 13
Apex Hosiery Co. v. Leader, 90 F. (2d) 155.....3, 13

Bedford Cut Stone Co. v. Journeymen S. C. Ass'n, 274 U. S. 37, 55, 56.....2, 29, 30, 31, 32, 33

Consolidated Edison Co. v. N. L. R. B., 305 U. S. 197.. 16, 17, 18, 19

Coronado Coal Co. v. United Mine Workers, 268 U. S. 298, 310..... 12

Duplex Printing Co. v. Deering, 254 U. S. 443.....29, 30, 33

Leader v. Apex Hosiery Co., 108 F. (2d) 71..... 3
Local 167; I. B. T. v. U. S., 291 U. S. 293..... 39
Loewe v. Lawlor, 208 U. S. 274.....22, 24, 30

Nash v. United States, 229 U. S. 375..... 6.
N. L. R. B. v. Friedman-Harry Marks Clothing Co., 301 U. S. 58.....14, 16
N. L. R. B. v. Fruehauf Trailer Co., 301 U. S. 49..... 16
N. L. R. B. v. Jones & Laughlin Steel Co., 301 U. S. 1..14, 16

Santa Cruz Fruit Packing Co. v. N. L. R. B., 303 U. S. 453..... 16

United Mine Workers v. Coronado Coal Co., 259 U. S. 344, 410, 411.....4, 10, 11
United States v. Buchalter, 88 F. (2d) 625..... 40
United States v. E. C. Knight Co., 156 U. S. 1..... 15
United States v. Greater New York Live Poultry Chamber of Commerce et al., 30 F. (2d) 939; Same, 34 F. (2d) 967..... 39
United States v. International Fur Workers Union, 100 F. (2d) 541..... 40
United States v. Shapiro, 103 F. (2d) 775..... 40

STATUTES CITED.

PAGE

Anti-Racketeering Act (U. S. Code, Title 18, Secs. 420a-420e) 28, 33, 34

National Labor Relations Act:

U. S. Code, Title 29, Secs. 151-166 ..... 28, 36

Sec. 8, subs. 3 37

Sec. 13 37

Norris-LaGuardia Act:

U. S. Code, Title 29, Secs. 101-115 28

Sec. 4 33

Clayton Act, Sec. 6 ..... 24, 25

Senate Report No. 698, 63rd Congress, Second Session, p. 46 26

U. S. Code:

Title 15, Sec. 1 15

Title 15, Sec. 2 15

Title 29, Sec. 152 15

AUTHORITIES AND ARTICLES.

Berman, Labor and the Sherman Act (1939), 86 22

Boudin, The Sherman Act and Labor Disputes, 39 Columbia Law Review, 1283-1337 (Dec. 1939), and 40 Columbia Law Review, 14-51 (Jan. 1940) 22

IN THE

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OCTOBER TERM, 1939.

No. 638.

APEX HOSIERY COMPANY,
Petitioner,
against
WILLIAM LEADER and AMERICAN FEDERATION OF FULL FASHIONED HOSIERY WORKERS,
Respondents.

BRIEF ON BEHALF OF LABOR LAW COMMITTEE OF NATIONAL LAWYERS GUILD, *AMICUS CURIAE.*

Statement.

This brief is submitted, by permission of the Court, on behalf of the Committee on Labor Law of the National Lawyers Guild, because of the great interest of the questions involved in this case to the legal profession and the community at large.

The Problems Involved.

The case involves two problems, but only one is necessary for the disposition of the case. The consideration of the other depends on whether this Court desires to limit its decision strictly to the case at bar, or settle the larger legal problems involved in this case, which problems have become acute because of the many prosecutions against labor unions under the federal anti-trust laws now pending throughout the country.

In so far as the present case is concerned, the problem is a simple one: namely, whether the enactment of the National Labor Relations Act has brought within the scope of the Sherman Anti-Trust Act cases which had theretofore been without its purview, under the decisions of this Court, so as to subject labor unions to criminal prosecutions and civil liability for damages under the Sherman Anti-Trust Act in cases in which they could not have been so prosecuted or made liable before the adoption of that Act. In other words, the problem as related solely to this case is whether or not the decisions of this Court in the cases under the National Labor Relations Act had *expanded* the scope of the Sherman Act and *extended* the liability of labor unions thereunder.

The larger problem involved in this case, but not absolutely necessary to its decision, is really a double problem. It involves, first, the problem of the clarification of previous decisions of this Court under the Sherman Act in its relation to labor disputes, including the question as to whether certain of those decisions had been correctly decided; and, second, whether the legislation enacted by Congress since the *Bedford Cut Stone* case, which is the last one in which the problem of the applicability of the Sherman Act to labor had been directly considered by this Court, has made the Sherman Act *no longer applicable* to labor disputes.

ARGUMENT.

I.

The decision of the Court of Appeals was clearly right under the law as laid down by this Court previous to the enactment of the National Labor Relations Act, and the National Labor Relations Act has not extended the liability of respondents under the Sherman Act.

It is clear that but for the enactment of the National Labor Relations Act, and the decisions of this Court thereunder, the decision of the Court of Appeals here under review would not have been questioned. That decision was clearly right under the decisions of this Court in the *Coronado* and other cases. Such was the original decision of the District Court when the case first came before that Court,[1] and the decision under review merely applies established law. It was, however, argued below and will be argued here, that the enactment of the National Labor Relations Act has changed the legal situation by *expanding* the concept of interstate commerce, thereby *extending* the liability of labor unions under the Sherman Act, so as to include the present case. And the decisions of this Court under the National Labor Relations Act are cited as authority for that contention. Such was the opinion of the Circuit Court of Appeals on the first appeal,—the appeal from the original decision of the District Court dismissing the injunction suit, which was a companion suit to the present action.[2] That opinion, we respectfully submit, was clearly erroneous, and the later decision of the same Court of Appeals, reversing its earlier position,[3] was and is, clearly right. The judgment appealed from should, therefore, be affirmed.

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[1] *Apex Hosiery Co.* v. *Leader*, 20 Fed. Sup. 138.
[2] *Apex Hosiery Co.* v. *Leader*, 90 F. (2nd) 155.
[3] *Leader* v. *Apex Hosiery Co.*, 108 F. (2nd) 71.

II.

The federal anti-trust laws are not applicable to labor disputes.

1. The federal anti-trust laws were never intended to apply to labor disputes. The decisions of this Court (with the exception of the second *Coronado* case), in which this Court has held the Sherman Act applicable to labor disputes, were limited to cases of the boycotting of commodities *in* interstate commerce, and proceeded upon the theory that after a commodity has become an article of interstate commerce it is the nature of the commodity affected rather than the nature of the dispute which was decisive. In this, we respectfully submit, the Court was in error, in that the inquiry should be not as to the nature of the commodity affected, but as to the nature of the dispute involved.

The *Coronado* cases are somewhat *sui generis:* On the one hand, the distinction was recognized between commodities in interstate commerce and a dispute with respect to terms and conditions of labor,—the decision in the second *Coronado* case proceeding upon the theory that the object of the agreement or conspiracy was the price of coal in interstate commerce, and that the labor dispute was merely an incident of a larger object which the conspirators sought to accomplish, namely, the control of the price of coal in interstate commerce *generally*. But, on the other hand, the court overlooked the fact that the so-called conspirators were not interested in the price of coal in interstate commerce, *as such;* that their real object,—that is to say, their altimate object,—was not the fixing of coal prices, but the term and conditions of the labor contract. Both, the immediate conflict involved in the *Coronado* cases and *the ultimate object or purpose to which this dispute was a step*, were concerned with the terms and conditions of the labor contract and not with the price of coal. The object of this alleged conspiracy began and ended with the labor contract, which was the real *concern* of the alleged conspirators; and the affectation of the price of coal in interstate commerce was merely an incident, intermediate between the overt acts involved in the case and the object sought to be accomplished by the alleged conspirators.

2. Whatever the law as laid down by this Court in the last of its decisions in which this problem was considered, it is clear that Congress, by subsequent legislation, has made the federal anti-trust laws inapplicable to labor disputes. In this Congress has proceeded steadily in accordance with its original intention that anti-trust laws should not be applied to labor because the evil designed to be remedied by these laws lay in a different social and economic domain. The anti-trust laws were intended to preserve competition in interstate commerce, and to prevent interstate commerce from monopolization. But it was never the policy of the United States to foster competition among laborers, or to prevent their combination into strong organizations which could control the price and other conditions of labor. On the contrary: The beneficial effects of labor combinations was recognized as early as the earliest of our anti-trust laws. And as time proceeded, this recognition was brought home, more and more, to the people of this country and to the Congress of the United States. So much so, that at the commencement of the fifth decade after the enactment of the first anti-trust law by Congress, Congress embarked upon a course of legislation which not only *recognized* the beneficial effects of labor organizations and their activities, but *fostered the growth* of such organizations. In pursuance to this policy, Congress enacted a series of laws intended to protect labor organizations in the very activities which would be prohibited under the anti-trust laws if those laws were held applicable to labor.

After fifty years of controversy, we respectfully submit, that it can now no longer be disputed that as a matter of historical fact Congress had intended that the Sherman Act should not be applied to labor disputes. And the confusion existing in the professional mind, and in some of the adjudicated cases, with respect to this subject, is due, we respectfully submit, to a failure to differentiate between the acts of labor union officials while engaged in carrying out the legitimate objects and purposes of their organizations on the one hand, and acts which they may engage in for purposes

not recognized by labor unions as among their objectives, on the other. In other words, it is assumed that a holding that the federal anti-trust laws are inapplicable to labor disputes, would be tantamount to holding that officials of labor unions who went out of their way to become part of a price-fixing combination *as such* were exempt from prosecution under the Sherman Act. Such is not our contention. But, on the other hand, a holding that such labor union officials were within the purview of the Sherman Act, need not, *and should not*, be followed by a holding that an agreement among members of a labor union, or among labor unions, to pursue the legitimate objects of labor unionism—*including the object of attempting to organize all the workers of a given industry into one union*—is within the prohibitions of the Sherman Act. And that is true even though the attempt to carry out such objective may involve an interruption of the production of goods destined *for* interstate commerce, or the transportation of goods *in* interstate commerce; or the purchase and sale by the public at large of one commodity rather than another, or the same commodity from one merchant rather than from another.

It must be borne in mind that we are dealing with a conspiracy statute; and that, therefore, the decisive elements are the *agreement* and *object* of the conspiracy. *The essence of the conspiracy is the agreement; and the essence of the agreement is its object.*

It is the agreement that is prohibited and not the means whereby it is carried out.

In this respect a conspiracy under the anti-trust laws is different from a common law conspiracy. If the object is the monopolization or restraint of interstate commence, the agreement to carry out that object is prohibited irrespective of the nature of the means intended to or actually employed in carrying it out. Indeed, the act is violated the moment the agreement is made even *if nothing were done thereunder*.[4] The nature of the means employed cannot, therefore, possibly

[4] *Nash* v. *United States*, 229 U. S. 373.

have any effect on the legality or illegality of the agreement. It follows, as a corollary, that the means employed for the purpose of carrying out a certain objective is a matter of indifference from the point of view of the anti-trust laws; and that the character of the means employed cannot bring within the purview of the anti-trust laws any objective or conspiracy which would not be within its purview if other means had been employed for the purpose of carrying it out.

3. It is settled by the decisions of this Court that the means employed is irrelevant to the issue as to whether or not a given agreement or conspiracy comes within the prohibitions of the Sherman Act. This is the rule generally under the anti-trust laws, and is no different where the question presented is that of its applicability to a labor dispute. In other words, the anti-trust laws were intended to accomplish certain economic results, and not to punish reprehensible conduct of individuals or groups. Such was the law of monopolies and restraints of trade under the common law; and such is the law under the federal anti-trust laws. It is significant in this connection, that at the very time that Congress was engaged in enacting a series of laws which made the anti-trust laws inapplicable to labor disputes, Congress enacted a law to safeguard interstate commerce from acts illegal, *per se, and exempted labor unions from its operation.*

While the two classes of laws have no relation to each other, in the sense that they are not part of an attempt to cure the same evil, it is of significance that they were enacted at the same time. And the significance is this: The growth of interstate commerce, and its growing complexity, made it necessary for Congress to change its attitude of passive benevolence towards labor organizations as a means of protecting and fostering interstate commerce. This development of interstate commerce also brought with it certain illegal practices which made it necessary for Congress to depart from its earlier policy of legislating only with respect to the *control* of interstate commerce, leaving attacks upon that

commerce by acts illegal *per se* to the states through which interstate commerce necessarily flows. But the protection of interstate commerce against acts illegal *per se*, now assumed by the Federal Government, was not effected by an amendment to the anti-trust laws but by specific legislation directed to that end,—thus clearly demonstrating that in the mind of the law-giver the *economic* problem of the *control* of interstate commerce, on the one hand, and what may be termed the *police* problem of protecting interstate commerce against acts *per se* illegal, on the other, were separate and distinct problems, requiring separate and distinct modes of treatment.

The so-called Anti-racketeering Act is, therefore, further proof,—if further proof were necessary,—that in applying the anti-trust laws *the means used to attain a certain result* may not be taken into consideration. *Only the objects and purposes of the agreement or conspiracy may be considered.*

POINTS.

PART ONE.

The decision appealed from was clearly right under the decisions of this Court under the Sherman Act; and the decisions of this Court under the National Labor Relations Act have not had the effect of extending the applicability of the Sherman Act to Labor Disputes.

POINT I.

It is clear that but for the possible effect of the National Labor Relations Act this case would not come within the purview of the federal anti-trust laws.

It seems to us to be beyond dispute, that but for the possible effect of the decisions of this Court interpreting the

National Labor Relations Act it could not be seriously argued that the present case comes within the purview of the federal anti-trust laws. The history of this litigation proves that beyond peradventure of a doubt. It will be recalled that when the question first came before the District Court, in the injunction suit, that Court dismissed the complaint on the ground that neither the complaint, nor the complaint plus the evidentiary matters submitted on the application for an injunction *pendente lite*, disclosed a case within the Sherman Act as theretofore interpreted by this Court. That the District Court, in so deciding, was right will become evident upon a mere reading of those portions of the complaint which stated the object of the "conspiracy". The pertinent allegations of the complaint are as follows:

> "For some time prior to May 6, 1937, defendant union unsuccessfully endeavored to enroll all of plaintiff's employees in its membership, which employees, however, preferred, of their own free will and accord, not to join any organized union and more particularly, not to join defendant's union.
>
> "Plaintiff is informed, believes, and therefore avers that prior to May 6, 1937, and on all dates hereinafter mentioned, by reason of defendant's failure to unionize plaintiff's plant on what is known to be a 'closed shop' basis, defendants thereupon decided upon more drastic and extreme measures *to force the unionization of plaintiff's plant*, and to force plaintiff to sign what is popularly known as a 'closed shop union agreement' * * * *and to this end*, defendants did unlawfully seek to force, coerce, intimidate and compel the employees of plaintiff to become members of defendant's union * * *
>
> "*To this end*, defendants committed the unlawful acts related in this and the succeeding paragraphs of this complaint, to wit:" (Complaint, pp. 10-12. Italics supplied.)

This statement of the *end sought to be attained* by the respondents, is followed by the allegation that certain acts, illegal *per se*, but of a purely local character, were committed by the respondents, *in pursuance to the alleged* "conspiracy"

and in order to accomplish its purposes. That the acts in themselves were of a purely local character, and but for any connection with the conspiracy to monopolize or restrain interstate commerce would not be illegal under any federal law, will not be disputed. But their legal significance deriving from the alleged restraint of interstate commerce was, of necessity, dependent upon the end of the conspiracy as stated by the pleader himself, as quoted above. And that such a conspiracy was not within the purview of the Sherman Act as construed by this Court prior to its decisions in the *Jones and Laughlin* and accompanying cases, had been settled by a long line of decisions by this Court and of the inferior courts following the decisions of this Court. It would be a vain show of learning on our part to attempt to cite the many cases that could be cited in this connection. We shall, therefore, limit ourselves to a brief discussion of the two *Coronado* cases, in which the question was carefully considered and definitely settled.

What may be called the physical facts were the same in both of the *Coronado* cases—the facts being substantially as follows: The defendants in that case—a miners' union and its officials—in an effort to unionize the workers of the plaintiff's mine, and to prevent its operation by non-union workers, destroyed the operating machinery of the mine, and also a carload of coal which was ready and billed for shipment in interstate commerce, thereby preventing the operation of the mine and the flow of its product in interstate commerce. Upon these identical facts this Court decided in the first case that the case did not come within the purview of the anti-trust laws and in the second case that it did—the decision turning upon the *purpose* of the defendants in stopping the flow of the product of the mine in interstate commerce as disclosed at the two trials. In other words, the turning point was the presence or absence of an *intent* to monopolize

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While there was a difference in the evidence adduced at the two trials, or brought out on the two arguments in this Court, as to the amount of coal involved, we do not believe that that circumstance affected the result.

or restrain interstate commerce, and not upon the physical question of the stoppage of that flow. In the first case this Court said:

> "Coal mining is not interstate commerce, and *obstruction of coal mining, though it may prevent coal from going into interstate commerce, is not a restraint of that commerce unless the obstruction to mining is intended to restrain commerce in it,* or has necessarily such a direct, material, and substantial effect to restrain it that the intent reasonably must be inferred.
>
> "In the case at bar, there is nothing in the circumstances or the declarations of the parties to indicate that Stewart, the president of District No. 21, or Hull, its secretary-treasurer, or any of their accomplices, had in mind interference with interstate commerce or competition when they entered upon their unlawful combination to break up Bache's plan to carry on his mines with nonunion men. *The circumstances were ample to supply a full local motive for the conspiracy.* Stewart said: 'We are not going to let them dig coal —the scabs.' *His attention and that of his men was fastened on the presence of non-union men in the mines in that local community.* The circumstance that a car loaded with coal and billed to a town in Louisiana was burned by the conspirators has no significance upon this head. The car had been used in the battle by some of Bache's men for defense. It offered protection, and its burning was only a part of the general destruction." (Italics supplied.)

United Mine Workers v. Coronado Coal Co., 259 U. S. 344, 410-411.

The principle thus laid down, that the mere stoppage of production intended for interstate commerce does not bring the case within the purview of the federal anti-trust laws in the absence of an attempt to monopolize or restrain that commerce, was not only adhered to but emphasized in the second *Coronado* case. We shall not stop at this point to consider whether or not the second *Coronado* case was correctly decided under the principles of the first *Coronado* case. Suffice it to say here, that, correctly or otherwise, the

point upon which the decision in the second case turned was that the facts at the second trial disclosed a *purpose to influence the price of coal in interstate commerce.* The rule of law which differentiates between a stoppage of the flow of interstate commerce and an intention to monopolize or restrain that commerce was thus stated by this Court, in the concluding paragraph of its opinion in the second *Coronado* case:

> "*The mere reduction in the supply of an article to be shipped in interstate commerce by the illegal or tortious prevention of its manufacture or production is ordinarily an indirect and remote obstruction to that commerce.* But when *the intent* of those unlawfully preventing the manufacture or production *is shown to be to restrain or control* the supply entering and moving in interstate commerce, or the price of it in interstate markets, their action is a direct violation of the Anti-trust Act. United Mine Workers v. Coronado Coal Co., 259 U. S. 344, 408, 409; United Leather Workers International Union v. Herkert & M. Trunk Co., 265 U. S. 457, 471; Industrial Asso. v. United States, 268 U. S. 64 (decided April 13, 1925). We think there was substantial evidence at the second trial in this case tending to show that the purpose of the destruction of the mines was to stop the production of nonunion coal and prevent its shipment to markets of other states than Arkansas, where it would by competition tend to reduce the price of the commodity and affect injuriously the maintenance of wages for union labor in competing mines . . ." (Italics supplied.)
>
> *Coronado Coal Co. v. United Mine Workers*, 268 U. S. 298, 310.

As already stated, there is no allegation in the complaint herein that the illegal acts complained of were done for the purpose and with the intent of monopolizing or *controlling* interstate commerce. On the contrary, as appears from the passage quoted above, the complaint expressly avers that the acts complained of were committed in pursuance of a purpose to unionize plaintiff's factory or forcing upon it a

closed-shop agreement,—both of which were clearly local matters, and neither of them is in any way related to an intent to restrain interstate commerce. The District Court was, therefore, clearly right when it dismissed the complaint in the injunction suit on the ground that the matters complained of had no relevancy to interstate commerce and were not within the purview of the Sherman Act.

Apex Hosiery Co. v. *Leader*, 20 Fed. Supp. 138.

POINT II.

The National Labor Relations Act has not expanded the meaning of interstate commerce, nor enlarged the operation of the anti-trust laws.

The correctness of the decision of the District Court in the injunction suit, (apart from the effect of the National Labor Relations Act), was not questioned in any way by the Circuit Court of Appeals when an appeal was taken by the plaintiff in that case (petitioner herein) from that decision. Indeed, the correctness of the decision of the District Court under the rules laid down by this Court anterior to the decisions under the National Labor Relations Act was admitted at least inferentially. For, the decision of the Circuit Court of Appeals reversing the decision of the District Court in the injunction suit was based solely upon its interpretation of the decisions of this Court under the National Labor Relations Act. In the statement introductory to its discussion of the decisions of this Court under the National Labor Relations Act, the Court of Appeals said:

> "It would not be profitable here to trace the expanding definitions and applications of 'commerce' as used in the past in the Constitution and the Sherman Act under other conditions. *We are concerned with what the law is today.*" (Italics supplied.)

Apex Hosiery Co. v. *Leader*, 90 F. (2d) 155, 159.

This statement was followed by a discussion of the import and meaning of the decisions of this Court in the *Jones & Laughlin* and *Friedman-Harry Marks* cases,[6] which led the Court of Appeals to the conclusion that this Court had expanded the meaning of interstate commerce as used in the Sherman Act so as to include *production for* interstate commerce.

That reasoning was clearly erroneous in two respects: In the first place, we are not concerned here with the constitutional power of Congress, but rather with the intentions of Congress in the exercise of that power. And, secondly, even with respect to the constitutional power of Congress it is incorrect to treat the concept of "interstate commerce" as if it were a technical term which either includes or excludes certain subjects or spheres of activity. For the purpose of this case, however, we need not concern ourselves with the second problem, for it is clear that we are not dealing here with a problem of constitutional power but with one of statutory construction. The problem before us is not what *power* Congress has, but what Congress has done in the exercise of its power. And as to that there can be no two opinions: A comparison of the two statutes clearly indicates the intention of Congress to differentiate between matters *in* interstate commerce and matters *affecting* interstate commerce. Its *constitutional power* is not limited to matters *in* interstate commerce, but extends to all matters *affecting* interstate commerce. But in exercising that power it has dealt in the one case with *interstate commerce as such*, and in the other with *matters affecting interstate commerce*. A comparison of the texts of the two statutes clearly reveals that. The first sentence of the first section of the Sherman Anti-Trust Act reads as follows:

> "Every contract, combination in the form of trust or otherwise, or conspiracy, *in restraint of trade or*

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[6] *N. L. R. B.* v. *Jones & Laughlin Steel Co.*, 301 U. S. 1; *N. L. R. B.* v. *Friedman-Harry Marks*, 301 U. S. 58.

commerce among the several states, or with foreign nations, is declared to be illegal."

U. S. Code, Title 15, Sec. 1.

And the second section of that Act reads:

"Every person who shall monopolize, or attempt to monopolize * * * *any part of the trade or commerce among the several states* or with foreign nations, shall be deemed guilty of a misdemeanor." (Italics supplied.)

U. S. Code, Title 15, Sec. 2.

It is clear from the language of the statute that Congress was dealing with interstate commerce as such, and that nothing that is not interstate commerce was intended to be covered thereby. It is this language that is the basis of all of the decisions of this Court under the Sherman Act from the *Knight* case (*U. S. v. E. C. Knight Co.*, 156 U. S. 1) to date.

But the National Labor Relations Act does not speak simply of "commerce" or "*the* commerce," but of matters "*affecting* commerce." It is clear that the phrase "affecting commerce" was used in order to make sure that the decisions of the courts under the anti-trust laws would not apply. And in order to further insure that result, and to show clearly that in legislating with respect to labor relations it was not confining itself to the subject-matter covered by the anti-trust laws, Congress further defined the phrase "affecting commerce" as follows:

"The term 'affecting commerce' means *in* commerce, *or burdening or obstructing commerce or the free flow of commerce, or* having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce." (Italics ours.)

U. S. Code, Title 29, Sec. 152.

Congress has thus, in the clearest language possible, expressly stated that the National Labor Relations Act is not limited to matters "*in* commerce," but extends to many other matters which merely have a certain relation to commerce.

And the decisions of this Court dealing with that Act have, from first to last, stressed the point that this Act is not limited to matters *in* commerce, but extends to all matters *affecting* commerce in a certain way.

> *National Labor Relations Board* v. *Jones and Laughlin Steel Corp.*, 301 U. S. 1.
>
> *N. L. R. B.* v. *Fruehauf Trailer Co.*, 301 U. S. 49.
>
> *N. L. R. B.* v. *Friedman-Harry Marks Clothing Co.*, 301 U. S. 58.
>
> *Santa Cruz Fruit Packing Co.* v. *N. L. R. B.*, 303 U. S. 453.
>
> *Consolidated Edison Co.* v. *N. L. R. B.*, 305 U. S. 197.

We need not discuss all of these cases, for the last one is decisive of the question here involved, *—since the decision in that case expressly proceeded upon the theory that the employer in question was not engaged in interstate commerce.* In discussing the problem of jurisdiction in that case, the Circuit Court of Appeals of the Second Circuit said:

> "*It is not contended that the petitioners are themselves engaged in commerce as so defined.* They are local public utility corporations and their production and distribution of electricity, gas, and steam are carried on solely within the City of New York and the adjacent Westchester County. The contention of federal jurisdiction over the labor relations of such employers is rested upon the argument that an interruption of their business by an industrial labor dispute would vitally affect commerce, because (1) in producing electric energy, gas, and steam they use large quantities of raw materials originating outside the state of New York, and (2) some of their customers are engaged in interstate or foreign com-

merce or are instrumentalities of such commerce." (Italics ours.)

Consolidated Edison Co. v. N. L. R. B., 95 Fed. (2d) 390, 392.

And the jurisdiction was sustained by the Circuit Court of Appeals principally on the second ground. And during the argument of that case in this Court, present counsel, as counsel for the labor-union seeking to sustain the jurisdiction of the National Labor Relations Board, practically waived the claim of jurisdiction under the first ground, and limited the argument to the claim of jurisdiction on the second ground, saying,—

> "In this connection it must be remembered that the problem presented in this class of cases is never whether or not *the employer* is *engaged* in interstate commerce. That was the contention put forward and definitely rejected by this Court in the group of cases decided April 12, 1937. We have, therefore, in the statement of facts with reference to the activities of the companies involved herein deliberately left out some rather important facts relating to the purchase by them of materials in other States and transported to them in interstate commerce, and the sale by them of certain by-products in interstate commerce. As we view the law, these facts,—while important enough, and probably sufficient in themselves to give the National Labor Relations Board jurisdiction,—are relatively unimportant in this case. As we view the situation,—the combination of law and fact involved in this case,—the interference with and burden upon interstate commerce which would result from a labor dispute between the Consolidated Edison System and its employes would be much greater from a cessation of any of its *services* than from a cessation of its business either by way of purchases of raw materials or sales of commodities. We therefore consider the technical nature of the *business* conducted by the companies a relatively subordinate matter, which dwindles into insignificance besides the really important question,—*the effect upon interstate commerce of a cessation of the services involved.*"

And as we read the decision of this Court in the *Consolidated Edison* case, this Court, disregarding the question of Consolidated Edison's buying or selling anything in interstate commerce, based the decision in that case squarely on the principle that the problem under the National Labor Relations Act is not whether or not the employer in question is in interstate commerce, but whether or not the activity is such that a cessation thereof might affect interstate commerce. And when a court comes to the conclusion that the cessation of the activity of the employer in question might adversely affect interstate commerce, the labor relations of that employer would be within the purview of the National Labor Relations Act, even though that activity itself,—whether it be service or trade,—were concededly intrastate. In other words: "Affecting interstate commerce" and "interstate commerce" or "in interstate commerce" are not convertible terms,—the first term embracing a much larger field than the others. An activity may *affect* interstate commerce and therefore be within the purview of the National Labor Relations Act, without the activity itself thereby becoming interstate commerce so as to subject it to all the other federal laws affecting interstate commerce, or exempt it from state laws which are inapplicable, or may not be applied, to interstate commerce, because of the exclusive control over that commerce vested by the Constitution in the federal government.

Clearly, no one would claim that by reason of the decision of this Court that the labor-relations of the Consolidated Edison system were so intimately related to interstate commerce as to bring their regulation within the constitutional power of Congress, the *business* of the Consolidated Edison Company became part of interstate commerce within the purview of other statutes dealing with or regulating interstate commerce.[1] And, of course, no one would claim that the

[1] On a motion to dismiss the complaint of the Board because of lack of jurisdiction, the Consolidated pleaded a prior adjudication to the effect that it was not engaged in interstate commerce. This adjudication was in the form

decision of this Court in the *Consolidated Edison* case has turned the business of Consolidated Edison into interstate commerce so as to impair either the taxing or the regulatory power of the State of New York with respect to that *business*.

But it is the *business* of interstate commerce,—i. e., the *commerce itself*,—that is the subject-matter and the *concern* of the federal anti-trust laws.

In this connection it should also be remembered that there is a basic difference between the respective aims and purposes of the two statutes here under consideration, even in so far as interstate commerce itself is concerned,—a difference which we believe to be decisive in this case: *The National Labor Relations Act deals with obstructions to and interruptions of interstate commerce*, while the anti-trust laws deal with the *control* of the commerce itself. Of necessity, the Labor Relations Act must deal with matters which are outside of interstate commerce but may adversely affect

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of a decree entered in favor of the Consolidated in the United States District Court for the Southern District of New York in a suit brought by Consolidated and its affiliate companies against the Securities and Exchange Commission to obtain an adjudication that they were not subject to the provisions of the Public Utility Holding Company Act. * * * The decree sustained that contention and adjudged that the *business* of the Consolidated Edison system was wholly intrastate, and that the constituent companies "do nothing which directly burdens or affects interstate or foreign commerce." This prior adjudication was considered of so little relevancy to the issues under the National Labor Relations Act that it was not discussed by either the Court of Appeals or this Court. We take it that the decision of this Court in *Consolidated Edison Company* v. *N. L. R. B.*, holding that the *labor relations* of Consolidated *did* affect interstate commerce has not changed the status of that system's *business* under the Public Utility Holding Company Act. It is of some significance in this connection that the Public Utility Holding Company Act is, like the Anti-Trust Acts, part of Title 15 of the United States Code, which deals with "Commerce and Trade," while the National Labor Relations Act is part of Title 29 of the Code, which deals with "Labor."

it. But, we confidently submit, no one would claim that the anti-trust laws are concerned with the *control* of any business activity which is not itself interstate commerce. Most assuredly, anything that does not *monopolize* interstate commerce itself is no concern of the federal anti-trust laws. And the same is true with respect to *restraints*,—for restraints as envisaged in the Sherman Act does not mean *interruption*, but *control and regulation*. In other words, the subject-matter and concern of the federal anti-trust laws is the *manner in which interstate commerce is conducted and carried on*. In so far as *limitations* of that commerce come into question at all, they are the kind of limitations which are imposed as *methods of control* or monopolization. It is, therefore, clear that the National Labor Relations Act must of necessity cover a much wider field than the anti-trust laws. And it follows as a corollary, that an activity may be within the purview of the National Labor Relations Act without being within the purview of the Sherman Act. Which is the same as saying that decisions under the National Labor Relations Act have no necessary application to cases under the Sherman Act.

This brings us back to the problem of *intent* as a controlling factor in suits or prosecutions under the anti-trust laws. We have already seen that in order that a case may come within the purview of the federal anti-trust laws the *purpose* or object of the acts complained of must have been an intention to influence interstate commerce. But that is not all:

Not only must there be an intent to influence interstate commerce, but the influence must be by way of control and not merely by way of interruption, unless the interruption is itself merely a means to an end which is control.

PART TWO.

The anti-trust acts were not intended to apply to labor disputes; and if they were ever properly applicable to such disputes, they were made inapplicable by recent legislation.

POINT III.

"Labor Disputes" and "Labor Unions" Distinguished.

We respectfully submit, that much confusion in the discussion of the problem before us would be avoided if we approached the problem from the point of view of the activity rather than the organization involved. It is our contention that the federal anti-trust laws do not apply to labor unions as such. But that is not because all activities that a labor union might engage in are necessarily outside the purview of the Sherman Act, but because we believe that taking the labor movement as it is known to us, and applying ordinary legal principles as amplified by the Clayton Act and the Norris-LaGuardia Act, we can hardly suppose a set of facts which would bring a bona fide labor union within the purview of the Sherman Act. We need not go into that question here, however, since that would only complicate the present argument. We concede that labor union officials are subject to the provisions of the federal anti-trust laws; and for the purpose of the present discussion we shall assume that "labor union officials" and "labor unions" are convertible terms. But "labor disputes" is quite another matter,—and the present discussion is limited to the applicability of the federal anti-trust laws to *labor disputes*.[8]

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[8] In the following discussion, the terms "labor" and "labor disputes" are used as convertible terms, except where otherwise expressly stated.

POINT IV.

The Sherman Act was not intended by Congress to apply to labor disputes; and is not applicable to labor disputes according to correct principles of statutory interpretation.

This is not the place to re-examine, or even to review, the controversy over the intentions of Congress with respect to the applicability of the Sherman Act to labor. The present writer has gone into the subject at considerable length elsewhere,[9] and will state his conclusions here with due deference to the fact that in the *Danbury Hatters* case this Court has decided the historical question involved the other way. As stated in the articles referred to, it is the present writer's conviction that this Court has been led into error on the historical question by the fact, noted also by others,[10] that counsel for the employers in that celebrated case had placed before this Court a garbled version of the debates in Congress, and that garbled version was not challenged by counsel for the labor union, and this Court therefore assumed that the version presented by counsel for the employer was correct.

But we believe, that, important as the actual intention of Congress with respect to labor may be, the real significance of the debates in Congress at the time of the adoption of the Sherman Act lies in what Congress intended to *put into the Act* rather than in what it intended to *exclude therefrom*. In other words, it is not merely a question whether Congress intended to exempt labor from the operations of a law which would apply to labor but for the intention to exclude it, but rather, whether the law in question is one which would apply to labor in the absence of any evidence of intention one way or the other. The question before the courts should not have

[9] Boudin, The Sherman Act and Labor Disputes, 39 Columbia Law Review, 1283-1337 (Dec. 1939) and 40 Columbia Law Review, 14-54 (Jan. 1940).

[10] See Berman, Labor and the Sherman Act (1930), 86.

been limited to the question,—as unfortunately it was,—whether or not Congress had intended to exclude labor from the operation of the Sherman Act, but particularly whether the Act when construed by well-settled canons of statutory interpretation was properly applicable to labor by reason of the nature of the Act and the meaning of the legal terms used therein. And the answer to that question, we respectfully submit, must be in favor of non-applicability. Briefly stated, our contention is that: Assuming that we knew nothing of the intentions of Congress, and taking merely the text of the Act and applying to it the well-settled canons of statutory interpretation, the conclusion must be that the ordinary labor dispute is not within the purview of the Sherman Act.[11]

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[11] It is a well-settled canon of interpretation that legislative debates are not controlling in the interpretation of statutes, but may be resorted to in case of doubt. Bearing that in mind, it is permissible to resort to the intention of Congress with respect to the Act *generally*, in order to ascertain whether Congress intended to enact the common law into a federal statute or to enact something different from the common law. Such an examination will clearly demonstrate that it was the intention of Congress to enact the common law, and not to enact a law different or varying from the common law. As we believe to have demonstrated in the articles referred to, the condition of the law itself at the time of the adoption of the Sherman Act necessitates that conclusion. But if there were any doubt on the subject, it must be dispelled by a resort to the statements of Senator Hoar in explaining the Act to the Senate. On the other hand, the argument from the dropping of the amendments excluding labor, which had been introduced prior to the sending of the Sherman Act to the Judiciary Committee, are completely answered by the fact that the Act as it emerged from the Judiciary Committee was the "Sherman Act" no longer, but the "Hoar Act," or at least the Judiciary Committee Act, which bore no legal resemblance to the original Act, with respect to which the amendments excluding labor had been introduced and adopted. And in its new (the present) form, the text itself, because of the settled meaning of the legal terms employed, excluded labor.

POINT V.

The Clayton Act was intended to definitely exclude labor disputes from the purview of the federal anti-trust laws.

We respectfully submit that the intention of Congress in enacting Section 6 of the Clayton Act was to correct the error into which this Court had fallen in its decision in the *Danbury Hatters* case, and to definitely exclude labor disputes from the purview of the federal anti-trust laws.[12] It is impossible here to go into the pre-history of that famous piece of legislation. Suffice it to say, that it was the result of great agitation on the part of labor against the use of a statute intended to curb trusts for the purpose of curbing labor activities. Nor was the complaint on that score limited to labor. On the contrary, the use of the anti-trust act against labor had been branded as a misuse by many conservative lawyers and statesmen. It must be remembered in this connection, that, as already stated, up to that time there had been only one case in which this Court had applied the Sherman Act to labor, and that was the *Danbury Hatters* case, decided in 1908. It is also a matter of history that it was immediately after that decision that the agitation assumed the vast proportions which led to the adoption of the

[12] The present writer must state frankly that he has not examined the congressional debates preceding the enactment of the Clayton Act with the same thoroughness as he has examined those preceding the Sherman Act. Nor has he given the problem of statutory construction involved in the Clayton Act the same minute consideration that he has given to that involved in the Sherman Act. But he feels bound to state that whatever he has examined in either connection bears out the statement in the text with respect to the intentions of Congress, and leads him to the conclusion that, as a pure question of statutory construction, the result with respect to the Clayton Act must be the same as that with respect to the Sherman Act.

so-called "labor sections" of the Clayton Act. We would, therefore, be bound to assume, even in the absence of any specific evidence to that effect, that it was the intention of Congress to change the rule laid down by this Court in the *Danbury Hatters* case,—which means *the very principle of applicability* of the Sherman Act to labor. It seems to us rather futile to argue that the intention of Congress in enacting Section 6 of the Clayton Act was merely to legalize the existence of labor unions, since there had been only one case of an inferior court in which a labor union had been referred to as an illegal combination under the Sherman Act.

That case was clearly against the current of legal decision, both in the state and in the federal courts, and no one seriously worried that this Court would so hold if the question were presented to it for decision. But we need not speculate on the subject, since we have the explicit statement on the subject of the Committee of Congress which framed the Act in question. It will be recalled that the Clayton Act, so-called, was a measure introduced into the House of Representatives by Mr. Clayton, of Alabama, after whom the Act is named. As adopted in the House, the section in question was known as Section 7, and was renumbered Section 6 after certain amendments had been made to the Act as a whole in the Senate. Upon reaching the Senate, the House bill was referred to the Senate Committee on Judiciary, which reported it to the Senate with amendments, and a recommendation that it be adopted as amended. In its report to the Senate, the Senate Judiciary Committee said with respect to the section then known as Section 7 of the bill, and now known as Section 6 of the Clayton Act:

> "This is the section which declares that nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, horticultural and other organizations, instituted for the purposes of mutual help, and in having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from law-

fully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws.

"The Senate amendments propose to strike out 'fraternal' organizations, because, in the opinion of the Committee, not even a forced construction can bring them under the ban of the antitrust laws, and there is no reason for including them in this enactment. It is also proposed to strike out 'consumers' in this paragraph. This is recommended by the Committee upon the ground that 'consumers' in the economic sense in which the word is used in the bill, while probably intended to apply only to consumers of food products and clothing, is susceptible of much abuse if in the unrestricted sense it is applied, as possibly it may be in imaginable cases, to all character of consumers, including corporations generally, as they are unquestionably consumers. But the principal consideration which moved the Committee to strike out 'consumers,' which also applies in a less degree to 'fraternal' organizations, is that they believe the only organizations which should be excluded *from the operation* of the antitrust laws are those where labor is the basis or one of the chief factors in the organizations, as in the case of labor organizations proper, and in agricultural and horticultural organizations. *The Committee rest this distinction upon the broad ground that labor is not, and ought not to be regarded as, a commodity, within the purview of antitrust laws.*"

Senate Report No. 698, 63rd Congress, Second Session, p. 46.

Clearly, this could not possibly have referred to a section intended to legalize the existence of labor unions. The Committee expressly says that the intention is to exclude labor from the "*purview of antitrust laws.*"[13]

[13] We regret that the exigencies of time do not permit us to discuss this phase of the subject as adequately as we should, on the basis of our investigation in so far as we have already gone into the subject. In this connection, the pres-

POINT VI.

If the federal anti-trust laws have ever been applicable to labor disputes they were made inapplicable to such disputes by recent congressional legislation.

We respectfully submit, that the course of congressional legislation with respect to labor commencing with the enactment of the Norris-LaGuardia Act clearly indicates an intention on the part of Congress to exempt the ordinary activities of labor unions from the operation of the anti-trust laws. We further submit, that as a matter of law, those congressional enactments make the federal anti-trust laws inapplicable to the ordinary labor union activities, irrespective of the nature of the means employed. Again, we say; that, by that we do not mean any activities of labor union officials, but only those activities which are designed to further the purposes of labor unions, namely, the organization of workers into a union of their craft,—with the right to have one union in one craft; the raising of wages, and the improvement of other terms of employment,—including the right to demand the closed-shop as one of such terms; and the employment of the usual weapons employed

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ent writer desires to state that he learned on March 6 that, at a meeting held the preceding Saturday, the Executive Board of the National Lawyers Guild decided to invite him to file this brief. And he was informed at the same time that the attorneys for the petitioner would not consent to this brief being filed unless it was served on them on or before March 15. Further negotiations resulted in an extension of time to March 18. At the time of receipt of this information the writer was engaged in the trial of a long and difficult case which required close and unremitting attention. The case is still on trial as this brief goes to the printer. This is stated here by way of apology for the sketchiness of this brief, of the deficiencies of which we are conscious,—because we had, in the articles referred to, animadverted on the poor quality of the briefs usually submitted by counsel who have presented labor's side of the argument on this subject before the courts.

by labor unions in the pursuit of those purposes, which may result in or constitute labor disputes.

Without going exhaustively into this subject, we shall mention only three congressional acts, in the order of their enactment. They are:

Norris-LaGuardia Act (U. S. Code, Title 29, Secs. 101-115);

Anti-Racketeering Act (U. S. Code, Title 18, Secs. 420a-420e);

National Labor Relations Act (U. S. Code, Title 29, Secs. 151-166).

(a) The Norris-LaGuardia Act.

In order that the bearing of the first of these acts on the problem of the applicability of the federal anti-trust laws to labor union activities may become clear, we must begin by an examination of the state of the law with respect to the federal anti-trust laws at the time of the enactment of that Act. In examining the language of the Sherman Act two things become clear: First, that we are dealing with a statute which had two ends in view, and sought to accomplish two purposes, treated in the first two sections of the Act, namely:—(a), the protection of *consumers* against high prices; and, (b), keeping the gates of commerce open to all comers. And, second, that the question of means has no relevancy whatever to the purposes or provisions of the Act. Stated differently, there was a unified *purpose,—the maintenance of competition,*—which would have two results; on the one hand it would secure to all those desiring to engage in commerce an opportunity to do so, and, on the other hand, it would protect the consuming public against an artificially high level of prices. And to neither of these purposes is the question of means relevant.

The purpose of the statute being the preservation of competition, there has always been grave doubt as to the applicability of the Sherman Act to the activities of labor unions, quite apart from the problem of the specific infer-

tion of Congress as revealed by the debates preceding the enactments of the Sherman Act, since both Congress and the courts had frequently expressed their approval of labor unions and their activities. So strong was this doubt that it survived the decisions of this Court holding that, as a general proposition, the Act was applicable to labor unions in at least some of their activities. In this connection, we must bear in mind what Mr. Justice Stone said in the *Bedford Cut Stone* case.

> "As an original proposition,—said Mr. Justice Stone,—I should have doubted whether the Sherman Act prohibited a labor union from peaceably refusing to work upon material produced by non-union labor or by a rival union, even though interstate commerce were affected. In the light of the policy adopted by Congress in the Clayton Act, with respect to organized labor, and in the light of Standard Oil Co. v. United States, 221 U. S. 1, 55 L. ed. 619, 34 L. R. A. (N. S.) 834, 31 Sup. Ct. Rep. 502, Ann. Cas. 1912 D, 734; United States v. American Tobacco Co., 221 U. S. 106, 178-180, 55 L. ed. 663, 693, 694, 31 Sup. Ct. Rep. 632, I should not have thought that such action as is now complained of was to be regarded as an unreasonable and therefore prohibited restraint of trade."
>
> *Bedford Cut Stone Co. v. Journeymen S. C. Asso.*, 274 U. S. 37, 55-56.

Mr. Justice Stone considered himself, however, constrained by the authority of the *Duplex* case[14] to hold otherwise, and so did Mr. Justice Sanford. Mr. Justice Brandeis dissented in a vigorous opinion, in which Mr. Justice Holmes concurred. These two decisions settled the law for the time being, *and settled it so as not to differentiate as to the means whereby the restraint or control is brought about.*

That was the necessary consequence of bringing labor disputes within the purview of the anti-trust laws. The anti-trust laws look to the *economic effects* of certain commercial

[14] *Duplex Printing Press Co. v. Deering*, 254 U. S. 443.

or industrial activities. They are not concerned with *the means* whereby these effects are brought about. Indeed, as may be seen from the language of the Sherman Act, the first concern of Congress were *contracts* or *agreements* in restraint of trade. The opening words of the Sherman Act are: "Every *contract*." And every case dealing with the subject makes it as clear as language can possibly make it that what is banned by the Sherman Act is *the agreement to control* trade and not the means whereby that agreement is carried out or the control effected. That that is no different in labor disputes was made clear by the *Loewe* case which definitely brought labor disputes within the purview of the Sherman Act, and by the two cases just referred to which kept labor disputes within that purview notwithstanding the exemption contained in the Clayton Act.

Loewe v. *Lawlor*, 208 U. S. 274.
Duplex Printing Press Co. v. *Deering*, 254 U. S. 443.
Bedford Cut Stone Co. v. *Journeymen Stone Cutters' Ass'n*, 274 U. S. 37.

In the *Duplex* case, this Court, after reviewing the earlier decisions on the subject, said:

> "*It is settled by these decisions that a restraint produced by peaceable persuasion is as much within the prohibition as one accomplished by force or threats of force*; and it is not to be justified by the fact that the participants in the combination or conspiracy may have some object beneficial to themselves or their associates which possibly they might have been at liberty to pursue in the absence of the statute." (Italics supplied.)
>
> *Duplex Printing Press Co.* v. *Deering*, 254 U. S. 443, 467-468.

And in the *Bedford Cut Stone* case this Court said, referring to the decision in the *Duplex* case:

> "The court further held that by prior decisions of this court, it had been settled that a restraint of interstate commerce produced by peaceable persuasion was as much within the prohibition of the Anti-trust Act as one accomplished by force or threats of force."

And then this Court proceeded to say:

> "Whatever may be said as to the motives of the respondents or their general right to combine for the purpose of redressing alleged grievances of their fellow craftsmen or of protecting themselves or their organizations, the present combination deliberately adopted a course of conduct which directly and substantially curtailed, or threatened thus to curtail, the natural flow in interstate commerce of a very large proportion of the building limestone production of the entire country, to the gravely probable disadvantage of producers, purchasers and the public; and it must be held to be a combination in undue and unreasonable restraint of such commerce within the meaning of the Anti-trust Act as interpreted by this court. * * * Any suggestion that such concerted action here may be justified as a necessary defensive measure is completely answered by the words of this court in Eastern States Retail Lumber Dealers' Asso. v. United States, 234 U. S. 600, that 'Congress, with the right to control the field of interstate commerce, has so legislated as to prevent resort to practices which unduly *restrain competition* or unduly obstruct the free flow of such commerce.'"
>
> *Bedford Cut Stone Co. v. Journeymen Stone Cutters' Ass'n.*, 274 U. S. 37, 50, 54.

The *Bedford Cut Stone* case involved *a peaceful strike, and that decision made that peaceful strike illegal.*

Such is the law today with respect to strikes in industries in interstate commerce if the decision in the *Bedford Cut Stone* case is still the law. And such will be the law in *every industry affecting interstate commerce* if the judgment of the District Court sought to be reinstated be the law. In other words, if the judgment of the District Court be upheld, it does not mean that the petitioner herein is entitled to recover because of the alleged "illegal" acts claimed to have been committed by the respondents, but that the petitioner would be entitled to recover triple damages even if the damage had resulted from a peaceful strike, as was the situation in the *Bedford Cut Stone* case. Petitioner would also be entitled to injunctive relief; and that irrespective of the means em-

ployed in accomplishing the interruption of and damages to petitioner's business.

Let us now see how that can be squared with the Norris-LaGuardia Act.

We respectfully submit, that upon examination it will be found that there is absolutely no way of squaring that enactment with the rule of law laid down in the *Bedford Cut Stone* case, or with the judgment of the District Court in this case. In this connection it must be remembered that under the Sherman Act as amended by the Clayton Act, there is no difference between the right to injunctive relief and the right to triple damages. Nor, for that matter, between civil liability and criminal liability. Each violation of the Sherman Act subjects the violator to a claim for triple damages and injunctive relief at the suit of the injured party, as well as to punishment under the criminal provisions of the Act. There is no distinction in principle, and we know of no case that has attempted to make the distinction; except, of course, that criminal liability must be *proven* under the principles governing criminal prosecutions.

There certainly is no distinction between the two civil remedies of triple damages and injunctive relief. There never was any as far as the substantive law is concerned, except that under the Sherman Act itself an injunction could only issue at the suit of the Government. There never was any distinction as to the nature of the agreement or activity upon which the claim of violation is based. And since the Clayton Act there is no distinction as to who may invoke the process of the court in an injunction suit. In the present case, therefore, petitioner, if the judgment of the District Court be correct, was entitled to injunctive relief, and an injunction should have issued in its favor when it sought that remedy. Indeed, such was the decision of the Circuit Court of Appeals in that suit. Furthermore, under the doctrine of the *Bedford Cut Stone* case, petitioner's right to injunctive relief did not depend on the acts alleged in the complaint claimed to be illegal *per se*, but would follow if the same result had been obtained by peaceful means. But,

on the other hand, Congress has emphatically stated in the Norris-LaGuardia Act that petitioner is *not* entitled to injunctive relief against a strike as such or peaceful picketing. Section 4 of the Norris-LaGuardia Act says:

> "No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute from doing, *whether* singly or in concert, any of the following acts:
>
> (a) Ceasing or refusing to perform any work or to remain in any relation of employment * * *
>
> (b) Giving publicity to the existence of or the facts involved in any labor dispute, *whether by advertising, speaking, patrolling* or by any other method not involving fraud or violence." (Italics supplied.)

We respectfully submit that there can be no doubt of the fact that by the Norris-LaGuardia Act the courts of the United States are specifically prohibited from issuing the kind of injunctions which were approved in the *Duplex Press* and *Bedford Cut Stone* cases. It is, therefore, beyond dispute that the injunctive relief provided for by the Clayton Act has been abolished as to labor disputes. And, we respectfully submit, it would be imputing irrationality to the Congress of the United States to assume that it had intended to exempt labor unions from the provision of the Clayton Act granting relief to individuals who suffered from violations of the Sherman Act, but left the labor unions subject to the triple damages provision of that Act. The *rationale* of our anti-trust laws does not permit such a course.

(b) The Anti-Racketeering Act.

The significance of the Anti-Racketeering Act, which is entitled "An Act to Protect Trade and Commerce Against Interference by Violence, Threats, Coercion, or Intimidation" is twofold:

In the first place, it clearly demonstrates, if further proof were necessary, that Congress carefully differentiates, in its legislation, between legislation intended to deal with matters illegal *per se*,—i. e., criminal acts, as such,—in so far as they affect matters within the legislative competence of Congress, on the one hand, and legislation intended to accomplish social, commercial, or economic ends. The first class of legislation deals with the nature of the acts involved, while the second class of legislation deals with the objects intended or results accomplished, irrespective of the means employed. The Anti-Racketeering Act is, therefore, part of Title 18 of the United States Code, which treats of criminal acts and lays down the law affecting crimes. The anti-trust acts, on the other hand, are part of Title 15, United States Code, which deals with or treats of commerce and trade. The latter class of legislation may contain many criminal provisions, but its provisions are intended not as the punishments for crime as such, but to prevent certain economic results; and they are, therefore, only applicable where the object of the acts made criminal is to accomplish the economic results sought to be guarded against.

The other aspect of the Anti-Racketeering Act, that which we believe to be most significant in our connection, is, that even where the Congress is dealing with acts illegal *per se*,—even in a criminal statute having as its subject violence, coercion and intimidation, Congress is most careful to exclude the ordinary activities of labor unions from its operation. Section 6 of the Anti-Racketeering Act (U. S. Code, Title 18, Sec. 420d), contains the following proviso:

> "* * * *Provided*, That no court of the United States shall construe or apply any of the provisions of this Act in such manner as to impair, diminish, or in any manner affect the rights of bona fide labor organizations in lawfully carrying out the legitimate objects thereof, as such rights are expressed in existing statutes of the United States."

The meaning of this proviso, we respectfully submit, is that even where the Act or "conspiracy" in question would

be such as to come within the provisions of the Act but for the proviso, it is not to be considered within the Act if the Act was committed in carrying out the legitimate objects of a bona fide labor union. *Otherwise, the proviso would be meaningless.*

That does not mean, of course, that Congress intended that acts of the kind described in this Act should go unpunished if they are employed in the pursuit of the legitimate objects of a labor union. But merely that punishment for such acts should be visited upon the individuals committing them, and under the ordinary criminal laws of the state or nation, as the case might be.

An act of violence committed by a misguided individual or group of individuals, in the pursuit of what they may deem to be, or which might actually be, a legitimate labor union object, is to be punished,—but it is to be punished as the act of those individuals, and under the ordinary criminal law; and not in pursuance to any act intended either to *regulate or to protect trade and commerce. Labor union activities are not part of trade and commerce as Congress conceives of these matters.* Congress, in this legislation as well as other legislation, was manifestly much concerned over the practise, unfortunately prevalent in our courts, of considering labor disputes part of trade and commerce, and to apply to such disputes every piece of legislation intended for the protection of trade and commerce; and was anxious to prevent it in this case.

This piece of legislation, incidentally, sheds great light on the labor provisions of the Clayton Act. Those provisions had by 1934 been emasculated of their true meaning by a narrow interpretation which limited the provisions of that Act to the protection of the bare existence of labor unions. We respectfully submit, that the Anti-Racketeering Act was an accusing finger pointed at those decisions,—or at least a guiding finger pointed to future decisions,—intended to show that Congress was not concerned merely with the existence of labor unions, but with a far more important subject,—

the protection of labor unions against the application to them and to their activities of every piece of legislation intended to protect trade and commerce either against illegal acts *per se* or undesirable economic results.

(c) The National Labor Relations Act.

But most important of all is the National Labor Relations Act.

If there be any doubt as to the extent of the effect of the Norris-LaGuardia Act on the federal anti-trust laws in their relation to labor, there can be none whatever as to the effect of the National Labor Relations Act,—*for that Act specifically legalizes the things which the anti-trust laws were designed to prevent.*

As already pointed out, the purpose of the anti-trust laws is to protect the public against the raising of prices and the monopolization of commerce through combination. But both of these things are specifically sanctioned, as far as labor is concerned, by the National Labor Relations Act. Indeed, it may be truthfully said that the purpose of that Act is *exactly the reverse* of the purpose of the anti-trust laws: The anti-trust laws are designed to foster competition by preventing combination, while the National Labor Relations Act is designed to foster combinations of workers by encouraging collective rather than competitive action. Indeed, this policy of fostering collective, as opposed to individual, competitive action, has been the policy of Congress with respect to labor for many years prior to the enactment of the National Labor Relations Act. It is indicated in the Norris-LaGuardia Act, which, in Section 3, outlaws the so-called yellow-dog contract. And the policy that was indicated in the Norris-LaGuardia Act is made the pivot about which turns that comprehensive piece of legislation known as the National Labor Relations Act. The first section of that Act commences with the declaration that—

> "The denial by employers of the right of employees to organize and the *refusal of employers to accept the*

> *procedure of collective bargaining* leads to strikes and other forms of industrial strife and unrest, which have the intent or the necessary effect of burdening or obstructing commerce."

And it winds up in the following declaration of policy:

> "It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred *by encouraging the practice and procedure of collective bargaining.*"

Having thus attested the fact that the opposition of employers to the procedure of collective bargaining *is detrimental to interstate commerce*, and having declared the policy of the United States to be to encourage *collective* instead of individual, competitive, bargaining, the Act proceeds to specifically sanction closed-shop agreement,—which have hitherto been denounced by the opponent of labor unions as the very essence of monopoly,—by declaring in Section 8, subsection (3)—

> "That nothing in this Act * * * *or in any other statute of the United States*, shall preclude an employer from making an agreement with a labor organization, to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9(a), in the appropriate collective bargaining unit covered by such agreement when made." (Italics supplied.)

It seems to us clear that the italicized words in the above quotation were deliberately inserted by Congress with a view to the federal anti-trust acts. But whether or not these particular words were so intended, there can be no doubt of the fact that the entire Act puts the matter beyond dispute independent of any particular provision, because of the spirit underlying and the purpose intended to be accomplished by the Act. Clearly, Congress could not possibly have intended

that the collective bargaining agencies which it sought to foster and encourage should be hampered in their activities by holding these activities illegal and subject to the provisions of the anti-trust laws.

Before leaving this subject, it is perhaps also worth noticing the language of Section 13 of the Act, which declares that—

> "Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike."

The right to strike is not only assumed to exist, but is considered as a fundamental right. Indeed, it could not be treated otherwise, in view of the provisions of the Norris-LaGuardia Act; and this section was apparently inserted as a safeguard against the contention that the National Labor Relations Act has nullified some of the provisions of the earlier Act because of the fact that it declares its purpose to be the prevention of strikes.[15] This provision makes it clear that while the ultimate purpose of the National Labor Relations Act is the prevention of strikes, the facts referred to in its opening statement had convinced Congress that the only way of preventing strikes is by fostering collective bargaining. Hence the declaration of policy contained in the first section of the Act.

But if the judgment of the District Court be correct, then the latest declaration of policy by Congress, as well as its elaborate legislation on the subject, has been utterly futile,—since the policy of collective bargaining through labor unions which it has attempted to foster and encourage will be defeated by an application of the anti-trust laws.

Again, we say, it must always be borne in mind that the right of the petitioner herein to recover does not depend on the *nature of the acts* alleged in the bill of complaint, but upon the effect of those acts in causing the cessation of production. The acts themselves were clearly matters of local concern, and redress for any damage caused by them

[15] An argument which counsel for employers were not slow to make even in the face of this specific provision.

can be had in the state courts. This action is, therefore, not based on the illegality *per se* of the acts alleged in the complaint, but on their alleged illegality under the anti-trust laws because of their *effect* on interstate commerce. The economic effect would have been the same if only peaceful means had been employed; and, as we have already pointed out, the legal result would follow irrespective of the nature of the means employed. *If, therefore, labor union activities are still subject to the provisions of the federal anti-trust laws, Congress has certainly labored in vain in rearing the elaborate structure of the National Labor Relations Act.*

POINT VII.

Some Activities and Decisions Distinguished.

It is perhaps unnecessary for us to repeat that in speaking of labor union activities under the preceding point, we were referring to what we believe was intended by the phrase "legitimate objects" used in Section 6 of the Clayton Act,—*activities directed towards organization or affecting the terms of the labor contract.* But in order to guard against any misunderstanding, we desire to repeat that our contention as to the inapplicability of the anti-trust laws to labor is limited to situations involving or growing out of a labor dispute, or situations which might lead to a labor dispute as thus envisaged. We do not claim that this exemption or inapplicability covers a situation such as existed for many years in the poultry industry in the City of New York and discussed by this Court in

Local 167, I. B. T. v. U. S., 291 U. S. 293,

and by other courts in

U. S. v. Greater N. Y. Live Poultry Chamber of Commerce, et al., 30 F. (2d) 939.
U. S. v. Same, 34 F. (2d) 967.

Nor to a situation such as existed in the dressers and dyers industry in the locality as disclosed in

U. S. v. Buchalter, 88 F. (2d) 625.
U. S. v. International Fur Workers Union, 100 F. (2d) 541.
U. S. v. Shapiro, 103 F. (2d) 775.

In the first of those situations there was a conspiracy by merchants to monopolize the trade in and control the price of a commodity in interstate commerce, and the labor unions and labor-union-officials involved had made themselves parties to *that* conspiracy. As we have already indicated, we have some doubt as to whether or not even in that situation the anti-trust acts were properly applied to the labor union. But that doubt is not due to any question as to the applicability of the anti-trust laws to the situation, but merely to the fact that we believe that labor union officials acting in the manner in which they acted in the situation may well have been considered to have acted *ultra vires*. That is, however, a matter involved in some difficulty and need not be gone into here, since it is not part of our argument. There can be no doubt of the fact that the conspiracy as such was one falling within the purview of the federal anti-trust laws, and that all actual participants therein could be prosecuted or sued under the Sherman Act.

The same is true of the situation involved in the second set of cases. In that situation there was a conspiracy among what might be called merchant fur-dressers to monopolize the trade and control the price of dressing in the metropolitan area of New York, and a labor union and labor union officials had made themselves parties to *that conspiracy*. Assuming that the activity of dressing and dyeing is commerce within the constitutional meaning of that term as well as within the meaning of the Sherman Act, the conspiracy itself was clearly within the purview of that Act, and all those actually participating in that conspiracy were properly sued and convicted for its violation.

But neither of those situations involved a labor dispute, or a legitimate labor-union activity, since the monopolization of trade or the control of prices in trade or commerce is not part of the objects of a *bona fide* labor union, and anything done in pursuance to such a conspiracy cannot possibly be considered a *bona fide* labor dispute.

Conversely, anything that involves a bona fide labor dispute cannot possibly be considered either an attempt to monopolize or restrain trade or commerce, and cannot, therefore, come within the purview of any anti-trust laws, federal or state.

CONCLUSION.

The federal anti-trust laws are not applicable to labor disputes. But whatever rule of the applicability of the federal anti-trust laws to labor disputes we may apply,—whether the rule contended for by us or that which was the accepted rule prior to the decisions of this Court under the National Labor Relations Act,—the decision of the Circuit Court of Appeals here under review was clearly right, and should be affirmed.

Dated: New York, March 15, 1940.

Respectfully submitted,

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IN THE

Supreme Court of the United States

No. 638.,
October Term, 1937.

APEX HOSIERY COMPANY,
Petitioner,

against

WILLIAM LEADER and AMERICAN FEDERATION OF FULL FASHIONED HOSIERY WORKERS, PHILADELPHIA BRANCH No. 1, Local 706
Respondents.

BRIEF FOR WORKERS DEFENSE LEAGUE AS *AMICUS CURIAE*

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March 22, 1940.

INDEX.

PAGE

Brief for Workers Defense League as Amicus Curiae.. 1

A labor union, by means of a strike, may intentionally and substantially restrain interstate commerce, without thereby rendering either it or its members liable to triple damages under Section 4 of the Clayton Act, provided that the ultimate purpose of such strike be to organize, or to bargain collectively, or to improve working conditions or wages, and that such restraint of interstate commerce be merely a necessary and appropriate means to such end..... 1

I. The provisions of the Norris-La Guardia Act, forbidding the issuance of injunctions against a union or its members in connection with strikes growing out of any labor dispute, are neither expressly nor impliedly limited to strikes which do not restrain interstate commerce, but were intended to, and must necessarily extend to strikes which restrain such commerce.

It cannot be seriously suggested that, while labor unions and their members may not be enjoined from conducting such strikes, they may conduct them only with the certainty of liability for triple damages..... 2

II. The declaration of public policy and the specific declarations of the substantive rights of labor, which the Congress has made in the Norris-La Guardia Act, would be beyond the competence of the Congress unless related to interstate commerce.

PAGE

This being so, it would be paradoxical to argue that, because a strike affects interstate commerce to the extent of restraining such commerce, it thereby goes beyond the right to strike declared by that Act 12

Opinion Below

Leader v. Apex Hosiery Company, 108 Fed. (2d) 71.

Cases Cited.

American Steel Foundries v. Tri-City Central Trades Council, 257 U. S. 184 ..... 3, 7, 8

Apex Hosiery Company v. Leader, 3 Cir. 90 Fed. (2d) 155 10

Apex Hosiery Company v. Leader, 20 Fed. Supp. 138 ... 10

Bedford Cut Stone Company v. Journeyman Stone Cutters Association, 274 U. S. 37 ..... 3, 5, 8

Duplex Printing Press Company v. Deering, 254 U. S. 443 ..... 3, 4, 8

Hitchman Coal & Coke Company v. Mitchell, 245 U. S. 269 ..... 7, 8

Leader v. Apex Hosiery Company, 108 Fed. (2d) 71 10

Levering & Garrigues Co. v. Morrin, 2 Cir. 71 F. 2d 284 .. 9

Negro Alliance v. Sanitary Grocery Company, 303 U. S. 552 2

Wilson & Company v. Birl, 27 Fed. Supp. 915 9

PAGE

Statutes Cited.

Clayton Act (Act of Oct. 15, 1914, C. 323, 38 Stat. 730, Title 15, Sec. 12-27, U. S. C. A.)

Section 4 ..... 1, 11, 14

Section 6 ..... 2, 4, 13

Section 20 (Title 29, Sec. 52, U. S. C. A.) 2, 4, 7, 13

Norris-La Guardia Act (March 23, 1932, c.90, 47 Stat. 70, Title 29, Sec. 101-115, U. S. C. A.) 2, 3, 10, 11, 12, 13, 14

Section 1 8

Section 2 9

Section 3 ..... 7, 8, 13

Section 4 ..... 7, 8, 9, 13

Section 5 ..... 6, 7, 8, 13

Section 7 8

Section 15 11

Sherman Anti-trust Act (Act of July 2, 1890, c.647, Sec. 1, 26 Stat. 209, Title 15, c.1, Sec. 1, U. S. C. A.)

Section 1 ..... 5, 12

Documents Cited.

House Report No. 669, 72nd Congress, First Session 3, 7, 8, 13

Senate Report No. 1060, 71st Congress, Second Session. 3

Senate Report No. 163, 72nd Congress, First Session... 3

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Respondents.

No. 638
October Term, 1937.

BRIEF FOR WORKERS DEFENSE LEAGUE AS *AMICUS CURIAE*

May It Please the Court:

Workers Defense League, as amicus curiae, submits this brief in support of the judgment of the United States Circuit Court of Appeals for the Third Circuit, reversing a judgment of the District Court of the United States for the Eastern District of Pennsylvania, which held the respondents liable to triple damages under Section 4 of the Clayton Act (Act of October 15, 1914, 38 Stat. 730, Title 15, Sec. 15, U. S. C. A.).

It will be the purpose of this brief to establish:

That a labor union, by means of a strike, may intentionally and substantially restrain interstate commerce, without thereby rendering either it or its members liable to triple damages under Section 4 of the Clayton Act, provided that the ultimate purpose of such strike be to organize, or to bargain collectively, or to improve working conditions or wages, and that such restraint of interstate commerce be merely a necessary and appropriate means to such end.

This brief will undertake to show that, so far as prior decisions or dicta of this Court may be inconsistent with this proposition, those decisions and dicta are in conflict with

public policy as declared by Congress under the Norris-La Guardia Act (March 23, 1932, c.90, 47 Stat. 70, Title 29, Sec. 101-115, U. S. C. A.).

I.

The provisions of the Norris-La Guardia Act, forbidding the issuance of injunctions against a union or its members in connection with strikes growing out of any labor dispute, are neither expressly nor impliedly limited to strikes which do not restrain interstate commerce, but were intended to, and must necessarily extend to strikes which restrain such commerce.

It cannot be seriously suggested that, while labor unions and their members may not be enjoined from conducting such strikes, they may conduct them only with the certainty of liability for triple damages.

The legislative history of the Norris-La Guardia Act, as well as the decisions of this Court itself construing that Act, conclusively establish that the purpose of the Norris-La Guardia Act was to carry out what Congress had intended to effect by the enactment of Sections 6 and 20 of the Clayton Act, but which intention had been defeated by the judicial construction given by this Court to those sections of that Act.

In *Negro Alliance* v. *Sanitary Grocery Company*, 303 U. S. 552; 82 Law Ed. 1012, Mr. Justice Roberts, speaking for the Court, said, at page 562:

> "The legislative history of the (Norris-La Guardia) Act demonstrates that it was the purpose of the Congress further to extend the prohibitions of the Clayton Act respecting the exercise of jurisdiction by federal courts and to obviate the results of the judicial construction of that Act."

As instancing the judicial construction referred to, the nion cites in a footnote the cases of *Duplex Printing Press mpany* v. *Deering*, 254 U. S. 443, 65 Law Ed. 349, and *erican Steel Foundries* v. *Tri-City Central Trades Coun-* 257 U. S. 184, 66 Law Ed. 189.

The same footnote also refers to House Report No. 669, d Congress, First Session, Senate Report No. 1060, 71st ngress, Second Session, and Senate Report No. 163, 72nd ngress, First Session.

At page 3 of the House Report, it is stated:

> "The purpose of the bill is to protect the rights of labor in the same manner the Congress intended when it enacted the Clayton Act, October 15, 1914 (38 Stat. L. 738), which Act, by reason of its construction and application by the Federal courts, is ineffectual to accomplish the congressional intent."

At pages 7 and 8 of the same report, specific reference is de to the decisions of this Court construing the Clayton t which, in the opinion of the House, rendered that Act ffectual to accomplish the Congressional intent, and re- red the passage of the Norris-La Guardia Act to effect t intent by overriding those decisions.

Two of the decisions to which the report specifically refers this respect are those cited in Judge Robert's opinion, the *plex Printing Press* case, supra, and the *American Steel undries* case, supra. The report, however, refers to a rd case not cited by Mr. Justice Roberts, *Bedford Cut ne Company* v. *Journeyman Stone Cutters Association*, U. S. 37, 71 Law Ed. 916.

n two of these cases, the *Duplex Printing* case and the *dford Stone* case, while this Court enjoined different types strike activities, both were enjoined on the specific ground t such strikes constituted a conspiracy in restraint of erstate commerce, in violation of Section 1 of the Sherman ti-trust Act. In the *American Steel Foundries* case, the isdiction seems to have been founded solely on diversity citizenship.

In the *Duplex Printing* case, this Court, Justices Brandeis, Holmes and Clarke dissenting, reversed the Circuit Court of Appeals for the Second Circuit, which had denied an injunction because of the doubt of that court of the right to enjoin under Sections 6 and 20 of the Clayton Act. In that case, an international union, through a local, was conducting a strike against a manufacturer of printing presses located at Battle Creek, Michigan. An injunction was asked against the international union, restraining it from warning customers in New York not to purchase or install presses made by the manufacturer, on pain of sympathetic strikes; from notifying a trucking company employed by such customer not to haul such presses; from notifying repair shops not to repair them; and from "resorting to a variety of other modes to prevent the sale of presses of complainant's manufacture in or about New York City and the delivery of them in interstate commerce."

This Court expressly held that such sympathetic strike activities constituted "a nation-wide blockade of the channels of interstate commerce."

The Court said, at pages 477-478:

> "The present case furnishes an apt and convincing example. An ordinary controversy in a manufacturing establishment, said to concern the terms or conditions of employment there, has been held a sufficient occasion for imposing a general embargo upon the products of the establishment and a nation-wide blockade of the channels of interstate commerce against them, carried out by inciting sympathetic strikes and a secondary boycott against complainant's customers, to the great and incalculable damage of many innocent people far remote from any connection with or control over the original and actual dispute,—people constituting, indeed, the general public upon whom the cost must ultimately fall, and whose vital interest in unobstructed commerce constituted the prime and paramount concern of Congress in enacting the Anti-trust Laws, of which the section under consideration forms, after all, a part."

In the *Bedford Stone* case, supra, this Court likewise reversed a Circuit Court of Appeals, in this instance for the th Circuit. That Court had affirmed a decree of the District of Indiana dismissing a bill to enjoin an alleged conspiracy in violation of the Sherman Anti-trust Act. This Court held that the enforcement by a stone cutters international union, of a rule forbidding its members to handle one partly fabricated by non-members of the union, constituted a violation of Section 1 of the Sherman Anti-trust Act (Act July 2, 1890, c.647, Sec. 1, 26 Stat. 209, Title 15, 1, Sec. 1, U. S. C. A.), and might be enjoined at the instance of quarriers and fabricators of stone produced by on-union labor. This Court specifically based the right to n injunction upon its finding that the primary aim and necessary consequence of the enforcement of such a rule was curtail the demand for such stone in interstate commerce, nd. therefore, constituted a violation of the Sherman Anti-rust Act, notwithstanding that the ultimate purpose might e to promote the interests of the union and its members by inging about the employment of such members by the complaining quarriers and fabricators.

The Court said, at page 47:

> "Respondents' chief contention is that 'their sole and only purpose * * * was to unionize the cutters and carvers of stone at the quarries.' And it may be conceded that this was the ultimate end in view. But how was that end to be effected? The evidence shows indubitably that it was by an attack upon the use of the product in other states to which it had been and was being shipped, with the intent and purpose of bringing about the loss or serious reduction of petitioners' interstate business, and thereby forcing compliance with the demands of the unions. And, since these strikes were directed against the use of petitioners' product in other states, with the plain design of suppressing or narrowing the interstate market, it is no answer to say that the ultimate object to be accomplished was to bring about a change of conduct on the part of petitioners in respect of the employment of union members in Indiana. A

> restraint of interstate commerce cannot be justified by the fact that the ultimate object of the participants was to secure an ulterior benefit which they might have been at liberty to pursue by means not involving such restraint."

Moreover, this Court held that, while an individual might lawfully refuse to perform any work, a refusal in concert with other individuals was unlawful.

The Court said, in this respect, at page 54:

> "An Act which lawfully might be done by one, may, when done by many acting in concert take on the form of a conspiracy and become a public wrong, and may be prohibited if the result be hurtful to the public or to individuals against whom such concerted action is directed."

It is most significant in this connection that the House Report expressly justifies the enactment of Section 5 of the Norris-La-Guardia Act on the application by this Court of the above doctrine to the restraint of interstate commerce.

Page 8 of the House Report in this respect reads as follows:

> "Section 5: This section provides that no United States court shall have jurisdiction to issue an injunction upon the ground that the persons participating in a labor dispute are engaging in an unlawful combination because of the doing in concert of the acts enumerated in section 4.
>
> This section is included principally because many of the objectionable injunctions have been issued under the provisions of the anti-trust laws, a necessary prerequisite for invoking the jurisdiction of which is a finding of the existence of a conspiracy or combination and without which no injunction could have been issued. For example, in the case of Bedford Cut Stone Co. v. Journeymen Stone Cutters' Association (274 U. S. 37) a 7 to 2 decision, where there was simply a rule by the association forbidding the members from working on the 'unfair' stone of the complainant, the Supreme Court

held that while it was lawful for members independently to refuse to work, when they refused in concert, it became a combination, and when this unreasonably interfered with interstate commerce, it could be enjoined under the anti-trust laws, resulting in the members being enjoined from refusing to work."

In the *American Steel Foundries* case, it has already been oted that the federal jurisdiction was apparently based olely on diversity of citizenship, and not on interference ith interstate commerce. This Court there held that, espite Section 20 of the Clayton Act, a union could be njoined from maintaining a picket line though, as the House eport states, at page 8:

"There was practically no fraud or violence"

t will be noted that Section 4 (e), (f) and (g) of the orris-La Guardia Act are directed to the overriding of his decision.

While the House Report does not specifically mention the ecision of this Court in *Hitchman Coal & Coke Company* v. *litchell,* 245 U. S. 269, 62 Law Ed. 260, as one of the udicial constructions of the Clayton Act which the Norris-a Guardia Act was intended to override, it is clear that ection 3, the "yellow dog contracts" section of the Norris-a Guardia Act was specifically occasioned by that decision.

In connection with Section 3 of the Norris-La Guardia ct, the House Report, however, notes that Section 3, unlike ection 5, is not essentially concerned with interstate com-nerce. The House Report states, at page 7:

"This section in no wise is concerned with interstate commerce or the application of the Sherman Act and its amendments, but the Federal courts obtain jurisdiction in cases involving such contracts, by virtue of diversity of citizenship and injunctions have been issued in the Federal courts on the basis of such contracts of employment."

It is clear, therefore, that the provisions of the Norris-La Guardia Act, forbidding the issuance of injunctions in connection with strikes growing out of labor disputes, not only do not expressly exclude from the protection of that Act strikes which restrain interstate commerce, but that it was the obvious intent of the Congress to prohibit injunctions even where strikes do restrain such commerce. Two out of the three decisions of this Court, the *Duplex Printing* case and the *Bedford Stone* case, which the House Report shows it was avowedly the intention to override, not only concerned strikes restraining interstate commerce, but such restraint of interstate commerce was the sole ground of the jurisdiction of this Court in those cases.

It is true that in the third case specifically mentioned in the House Report, the *American Steel Foundries* case, and in the *Hitchman* case, not specifically mentioned but obviously the target for Section 3 of the Act, the jurisdiction of this Court arose solely by reason of diversity of citizenship, and not because the strikes there enjoined involved in any way restraint of interstate commerce. Can it be said, however, in the absence of specific declaration in the Act itself, that it follows that the purpose of the Act was to prohibit injunctions only in cases where there is fortuitous diversity of citizenship, but to permit the enforcement of "yellow dog contracts" and prohibitions against picketing where there is no such fortuitous diversity of citizenship?

The answer is obvious.

Treated as a purely jurisdictional Act, which, obviously, the Norris-La Guardia Act is not, if it had been intended to confine the scope of that Act to cases where the jurisdiction of this Court arose solely by reason of diversity of citizenship, the first sentences of Sections 1, 4, 5 and 7 of the Act should have read:

> "No Court of the United States shall have jurisdiction *by reason of diversity of citizenship, etc.*"

Indeed, if it was intended so to restrict the scope of that Act, such express limitation was essential, since, unless the Federal courts had jurisdiction by reason of diversity of citizenship, those courts otherwise could issue no such injunctions except in cases where there was substantial restraint of interstate commerce.

As will subsequently be shown, however, the Norris-La Guardia Act is not purely a jurisdictional act, and any such suggested limitation of its scope would condemn the propriety of the declaration of public policy in Section 2 of that Act, as well as defeat the obvious intent of the Act to make lawful on the part of labor the actions specifically enumerated in Section 4 of the Act.

First, however, it is desired to point out that the construction of the Norris-La Guardia Act here contended for already has judicial sanction.

In *Wilson & Company* v. *Birl*, 27 Fed. Supp. 915, Judge Kirkpatrick of the District Court of the Eastern District of Pennsylvania, said at page 917:

> "The Norris-La Guardia Act, 29 U. S. C. A. Sec. 101 et seq., was intended to limit drastically the power of the Federal courts to issue injunctions in labor disputes. In fact, it might be said in a general way that the purpose was to put an end to it, except for a residue of jurisdiction necessary for the protection of property against destruction by violence or fraud.
>
> *To accomplish the purpose of the Act, Congress enumerated in Sec. 4 various types of conduct as to which jurisdiction to enjoin was taken away. The list covered a wide field of labor conflict activities and impliedly recognized the conduct in question as legitimate measures of offense and defense in labor disputes.*
>
> In this enumeration the Act is wholly objective. It is not concerned with the purpose for which the acts are done or with the state of mind of the participants or with any question of intent, expressed or presumed. The law makes no distinction between doing the acts in question with a legal object in view and doing them with an illegal object. See Levering & Garrigues Co. v. Mor-

rin, 2 Cir., 71 F. 2d 284. *In short, it was an adoption of the philosophy of Justice Brandeis's dissenting opinion in Duplex Printing Press Co. v. Deering, 254 U. S. 443, 41 S. Ct. 172, 183, 65 L. Ed. 349, 16 A. L. R. 196, which condemned the point of view which made conduct actionable 'when done for a purpose which a judge considered socially or economically harmful and therefore branded as malicious and unlawful.'* The only question is whether the acts which the plaintiff seeks to restrain are among those enumerated in Sec. 4 of the Act. If they are, this Court has no power to enjoin them.

Hence, it is immaterial whether the closed shop, plainly the objective of the defendants' program is, by the law of Pennsylvania, a legal or an illegal end, *and, for the same reasons, were it not for the decisions of the Circuit Court of Appeals for this Circuit in Apex Hosiery Co. v. Leader, 3 Cir., 90 F. 2d 155 (a matter to be discussed later), I should have said that it was also immaterial whether or not the defendants intended to restrain interstate commerce.*" (Italics supplied).

In connection with the reference of Judge Kirkpatrick to the decision of the Circuit Court of Appeals of the Third Circuit in *Apex Hosiery Company* v. *Leader,* 90 Fed. (2d) 155, it should be noted that the decision of the Circuit Court of Appeals there referred to, which Court then consisted of Judges Buffington, Davis and Dickinson, reversed the original refusal of Judge Kirkpatrick to issue an injunction in connection with the very strike here involved. *Apex Hosiery Company* v. *Leader,* 20 Fed. Supp. 138.

It is further to be noted that that decision of the Circuit Court of Appeals, however, has been repudiated as erroneous in the subsequent decision of that Court, composed, however, of Judges Biggs, Maris and Clark, in connection with the judgment of that Court which is the subject of the present writ of certiorari from this Court. *Leader* v. *Apex Hosiery Company,* 108 Fed. (2d) 71, 81.

Assuming, therefore, that the provisions of the Norris-La Guardia Act, forbidding the issuance of injunctions in

connection with strikes growing out of any labor dispute, extend to strikes which restrain interstate commerce, can it be seriously suggested that, while labor unions and their members may not be enjoined from conducting such strikes, they may conduct them not only at the peril, but with the certainty of liability for triple damages?

That question supplies its own answer. Such could not have been the intent of the Congress. To hold that it was, would be to subject a labor union and its members, under Section 4 of the Clayton Act, to inevitable liability for triple damages for doing, in the course of a strike restraining interstate commerce, the very acts which the Congress, in the Norris-La Guardia Act, has declared that it is necessary, in the public policy, that labor unions be permitted to do, free of restraint.

It may be suggested that the Congress, nevertheless, has not, either in the Norris-La Guardia Act or elsewhere, expressly provided that strikes growing out of labor disputes, although they restrain interstate commerce, shall not be held combinations or conspiracies in restraint of trade or commerce, within the meaning of Section 1 of the Sherman Anti-trust Act. The answer is that, while Congress has not expressly so provided, it must be held to have done so by necessary implication, in order to avoid, among other absurdities, the one just suggested. In this connection, it is to be noted that Section 15 of the Norris-La Guardia Act provides

> "All Acts and parts of Acts in conflict with the provisions of this chapter are hereby repealed."

As has already been suggested, however, the Norris-La Guardia Act is not merely a jurisdictional Act, but includes declarations of public policy and of substantive rights of labor, which would be beyond the competence of the Congress unless related to interstate commerce. This brief will therefore proceed to discuss the relevance of these considerations to the proposition which this brief has advanced.

II.

The declaration of public policy and the specific declarations of the substantive rights of labor, which the Congress has made in the Norris-La Guardia Act, would be beyond the competence of the Congress unless related to interstate commerce.

This being so, it would be paradoxical to argue that, because a strike affects interstate commerce to the extent of restraining such commerce, it thereby goes beyond the right to strike declared by that Act.

It has been seen that the jurisdiction of the Federal courts to issue injunctions under the Sherman Anti-trust Act must be based either upon diversity of citizenship or upon restraint of interstate commerce. It has also been seen that the provisions of the Norris-La Guardia Act, withdrawing from Federal courts jurisdiction to issue injunctions in connection with labor disputes, cannot, within the intent of Congress, be limited to injunctions where the jurisdiction of the Federal courts depends solely upon diversity of citizenship, but that such withdrawal of jurisdiction must extend to injunctions where the jurisdiction of those courts would be based on restraint of interstate commerce.

It would be even more absurd to suggest that the declaration of public policy in that Act, and its specific declarations of the substantive rights of labor, could be limited to those cases in which the jurisdiction of the federal courts attach solely by reason of diversity of citizenship. This would mean that the Congress would thereby have undertaken to make its declaration of policy and its declarations of substantive rights in a field in which the Congress was powerless to act unless its action had some necessary relation to the regulation of interstate commerce.

Indeed, the first Senate Report on the Norris-La Guardia Act refused to concur in the declaration of public policy proposed by that Act on the very ground that

> "there is a serious question of the power of Congress to make a valid declaration of policy upon any subject which lies outside the realm of federal authority" (Senate Report 1060, 71st Congress, 2nd Session).

It must, therefore, be assumed that when the Senate finally concurred in the House Report in substance (Senate Report 163, 72nd Cong. 1st Session), and joined in enacting that very declaration of public policy, the Senate must have assumed, and rightly assumed, that such declaration of policy was intended to be, and was related to interstate commerce.

Likewise, it must be clear that when both the House and Senate concurred in enacting Sections 3, 4 and 5 of the Norris-La Guardia Act, containing as they do not only restraints on the jurisdiction of the Federal courts, but substantive declarations of the rights of labor, that both the Senate and the House assumed such declarations of the rights of labor related to rights of labor in or affecting interstate commerce, since otherwise they would be beyond the competence of the Congress.

It would be a final absurdity, therefore, to hold that if the substantive rights of labor so declared by the Congress to be within the public policy of the United States, can only be effectively exercised by means of a strike restraining interstate commerce, they either may not be exercised at all, or may be exercised only with the certainty of liability to triple damages as the price of their exercise.

It is respectfully submitted that any such construction of the Norris-La Guardia Act would constitute a repetition of the judicial nullifications of the intent of the Congress in the passage of Sections 6 and 20 of the Clayton Act, which further nullification of such intent it was the express purpose of the Congress to prevent by enacting the Norris-La Guardia Act.

It is, therefore, respectfully submitted that this Court should hold that a labor union, by means of a strike, may intentionally and substantially restrain interstate commerce, without thereby rendering either it or its members liable to triple damages under Section 4 of the Clayton Act, provided that the ultimate purpose of such strike is the exercise of the rights of labor declared by the Norris-La Guardia Act, and that such restraint of interstate commerce is merely a necessary and appropriate means for the exercise of such rights.

Respectfully submitted,

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MAR 27 1940
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

No. 638

OCTOBER TERM, 1939

APEX HOSIERY COMPANY, a Pennsylvania Corporation,
Petitioner

vs.

WILLIAM LEADER AND AMERICAN FEDERATION OF FULL-FASHIONED HOSIERY WORKERS, Philadelphia Branch No. 1, Local No. 706, *Respondents*

On Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit

BRIEF ON BEHALF OF CONGRESS OF INDUSTRIAL ORGANIZATIONS AMICUS CURIAE

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THE CORNELIUS PRINTING COMPANY

INDEX

	Page
Statement	1
Limits of Immunity	3
Summary of Argument	3
Argument	
I. The intent of Congress can be found in the legislative records and debates	8
II. This Court has the power to correct erroneous constructions of congressional intent	9
III. The history of Section 6 of the Clayton Act conclusively demonstrates that Congress intended to give labor unions a limited immunity from being held or considered to be combinations in restraint of trade under the anti-trust laws	12
A. Section 6 of the Clayton Act was intended to change the construction given to the Sherman Act by the courts	12
1. Congress in passing the Sherman Act did not intend it to apply to labor unions	13
2. The decision of the Court construing labor organizations to be combinations in restraint of trade cannot be supported	21
3. The decision of the Court set in motion an organized drive to amend the law	26
B. The legislative records amply demonstrate that Section 6 of the Clayton Act was intended to confer upon labor unions a limited immunity under the anti-trust laws	28
1. The amendment of the Sherman Act became a major political issue	28
2. At the hearings on the Clayton Act, labor and progressive groups sought a limited immunity	29
3. Section 6 of the Clayton bill as originally introduced in the House only protected labor unions against dissolution	31
4. The Henry Amendment was introduced to overcome the objections to Section 6 in its original form	32

Page

5. The Thomas and McDonald Amendments proposing to grant labor a broader immunity were rejected as already embraced in the Henry Amendment 37

6. The debate in the Senate confirms the meaning of Section 6 as passed in the House, and the Culberson amendment was passed to dispel all doubts 40

7. The defeat of the Gallinger Amendments in the Senate is final and conclusive proof that Section 6 was intended to give labor the limited immunity contended for herein 46

IV. The decision of the Court that Section 6 of the Clayton Act did not give labor unions a limited immunity from the anti-trust laws has no support in the legislative history of the act 48

V. The effect of the Court decisions is to construe and hold labor unions to be combinations in restraint of trade whenever the activities of the union are considered to be undesirable by the courts 53

1. The tests used by the courts in applying the anti-trust laws to unions menace the maintenance and extension of union standards 54

2. The limits of the immunity granted by Section 6 of the Clayton Act have been indicated in certain decisions of this Court 59

VI. The labor policy of the Federal Government as set forth in subsequent legislation is inconsistent with the decisions of this Court denying labor a limited immunity under the anti-trust laws 60

1. Norris-LaGuardia Anti-Injunction Act 62

2. Railway Labor Act 63

3. National Labor Relations Act 63

4. Public Contracts Act 64

5. Fair Labor Standards Act of 1938 65

6. Summary of Recent Federal Labor Legislation 65

Conclusion 66

CITATIONS

Cases

	Page
Alco-Zander v. Amalgamated Clothing Workers, 35 F. (2) 203	55, 57
Boston Store v. American Graphophone, 246 U. S. 8	11, 12
Burnet v. Coronado Oil & Gas Company, 285 U. S. 393	10, 11
Chicago and Eastern Railroad Company v. Industrial Commissioner of Illinois, 284 U. S. 296	11
Cleland v. Anderson, 66 Neb. 252	24
Commonwealth v. Hunt, 4 Metc. (45 Mass.) 111	24
Coronado Coal Co. v. United Mine Workers, 268 U. S. 295	54, 55
Dahnke-Walker Milling Company v. Bondurant, 257 U. S. 282	9
Dickinson Industrial Site v. Cowan, 308 U. S. —	9, 13
Duplex Printing Company v. Deering, 254 U. S. 443,	10, 49, 50, 54
Erie Railroad Co. v. Collins, 253 U. S. 77	11
Erie Railroad Co. v. Tompkins, 304 U. S. 64	2, 10
Erie Railroad Co. v. Szary, 253 U. S. 86	11, 23
Friedlander v. Texas & Pacific Railway Company, 130 U. S. 416	11
Gleason v. Seaboard Airline Railway Company, 278 U. S. 349	11
Gordon v. Ogden, 3 Pet. 33	11
Helvering v. Hallock, 60 Sup. Ct. 444	2, 10, 23
Henry v. A. B. Dick Company, 224 U. S. 1	11, 12
Hornbuckle v. Toombs, 18 Wall. 648	11
Kountze v. Omaha Hotel Co., 107 U. S. 378 (1882)	11
Leader v. Apex Hosiery, 302 U. S. 656	24
108 F. (2d) 71	10
Lee v. Chesapeake & Ohio Railway Company, 260 U. S. 653	11
Local 167 v. United States, 291 U. S. 293	59
Loewe v. Lawlor, 208 U. S. 274	10, 21, 22
London Street Tramways v. London County Council [1898] A. C. 375	12
Neirbo Company v. Bethlehem Shipbuilding Corp., 60 Sup. Ct. 153	10
Omaechevarria v. Idaho, 246 U. S. 343	9, 13
Orchard v. Hughes, 1 Wall. 73	11
People v. Fischer, 14 Wend. 18	24
Piedmont Coal Company v. Seaboard Fisheries, 254 U. S. 1	9
Reed v. Bishop of Lincoln [1892], A. C. 644	12
Republic Steel Corp. v. Congress of Industrial Organizations, et al., D. C. N. D. E. D. Ohio, No. 19864	3
Rosen v. United States, 245 U. S. 467	11

Page

Shelton v. Collector, 5 Wall 113 ..... 9, 11
Stafford v. Union Bank of Louisiana, 16 How. 135 11
Standard Oil Company v. United States, 221 U. S. 1 ..... 12, 14
United Leather Workers v. Herkert, 265 U. S. 457 55
United Mine Workers v. Coronado Coal Company, 259 U. S. 344 54
United Mine Workers v. Red Jacket Company, 18 F. (2d) 839 55
United States v. Borden, 60 Sup. Ct. 182 59
United States v. Brims, 272 U. S. 549 59
United States v. Freight Association, 166 U. S. 291 12
United States v. Lowden, 60 Sup. Ct. 248 61
United States v. Phelps, 107 U. S. 320 ..... 9, 11
United States v. Reid, 12 How. 361 11
United States v. Workingmen's Amalgamated Council, 54 Fed. Rep. 994 24
Wilson v. Daniels, 3 Dal. 401 11
Wisner, Ex Parte, 203 U. S. 449 11

Legislation

Clayton Act, Act of Oct. 15, 1914, c. 323, 38 Stat. 731, 15 U. S. C. Sec. 8 et. seq.
Sec. 6 4
Sec. 20 ..... 26, 51
Fair Labor Standards Act of 1938, Act of June 25, 1938, c. 676, 525 Stat. 1060, 29 U. S. C. Sec. 202 65
National Labor Relations Act, Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C. Sec. 151 64
Norris-LaGuardia Anti-Injunction Act, Act of Mar. 23, 1932, c. 90, 47 Stat. 70, 29 U. S. C. Sec. 102 62
Public Contracts Act, Act of June 30, 1936, c. 1, 49 Stat. 2036, 41 U. S. C. Sec. 35 64
Railway Labor Act, Act of June 21, 1934, c. 691, 48 Stat. 1186, 45 U. S. C. Sec. 152 63

Other Authorities

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Berle & Means, *The Modern Corporation and Private Property* (1937) 15
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Boudin, *The Sherman Act and Labor Disputes* (1939) 39 Col. L. Rev. 1288 19

Page

Chicago Conference on Trusts (1890) 15

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37 Proc. A. B. 1914 52

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Transcript of Records (1907) Vol. 48, No. 389 23

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Congressional Record

Vol. 20 16

Vol. 21 ..... 15, 17-21

Vol. 51 ..... 27, 28, 32, 33, 36, 37, 38, 39, 40, 41, 45, 47, 48

IN THE

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BRIEF ON BEHALF OF CONGRESS OF INDUSTRIAL ORGANIZATIONS AMICUS CURIAE

STATEMENT

This brief, submitted on behalf of the Congress of Industrial Organizations, rests upon two fundamental propositions. The first is:

> "The assumption that the meaning of a representative assembly attached to the words used in a particular statute is rarely discoverable, has little foundation in fact. The records of legislative assemblies once opened and read with a knowledge of legislative procedure often reveal the rarest kind of evidence."[1]

[1] Landis, *Note on Statutory Interpretation* (1930) 43 Har. L. Rev. 886, 888.

The second is:

> "In this Court *stare decisis* in statutory construction is a useful rule, not an inexorable command."[2]
>
> "Surely we are not bound by reason or by the considerations that underlie *stare decisis* to persevere in distinctions taken in the application of a statute which, on further examination, appear consonant neither with the purpose of the statute nor with this Court's own conception of it."[3]

Upon these two basic premises we submit that the legislative history of Section 6 of the Clayton Act, not hitherto presented to this Court, conclusively demonstrates that Congress intended to give labor unions an exemption or immunity from being held or considered to be combinations in restraint of trade under the anti-trust laws.

We further submit that the legislative history warrants a reconsideration by this Court of its prior decisions and justifies the exercise by this Court of its power to correct past error in the construction of statutes. This reconsideration is essential to correct abuses in the distribution of powers in our representative form of government.

The issue which we raise was presented to the Court below and was squarely passed on by it, the Court in effect declaring that it was bound by the previous decisions of this Court. (*Leader v. Apex Hosiery Co.* 108 F (2d) 71, 75. The interest of the CIO in this case is evident. The respondent union is a local of one of its affiliates, and the CIO is itself facing a suit under the anti-trust laws for treble damages amounting

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[2] Mr. Justice Reed in *Erie Railroad v. Tompkins*, 304 U. S. 64, 91.
[3] *Helvering v. Hallock*, 60 Sup. Ct. 444, 453.

to $7,500,000. (*Republic Steel Corporation v. Congress of Industrial Organizations, et al.* D.C.N.D. E.D. Ohio, No. 19864.)

LIMITS OF IMMUNITY

At the outset, we wish to clarify what we consider to be the extent of the immunity for which we contend. This immunity goes beyond the protection of the mere existence of labor unions. It extends to any act which may be done by a combination of labor alone. It therefore extends to all of the activities undertaken by labor unions when acting by themselves, whether it be entering into a collective bargaining agreement or a strike, boycott or picketing. The coercive or violent nature of the action is immaterial. Other laws are available to punish criminal acts.

On the other hand, the immunity does not extend to any combination of labor and other persons engaged in a particular business or industry, which combination may be a restraint of trade as that term has been defined under the law. Thus, if a labor union joins with manufacturers and dealers in a combination, which without the presence of the union, would be unlawful under the anti-trust laws, that combination cannot have the benefit of an immunity given to a combination of labor alone and the union entering into that combination loses its immunity. This limited immunity is what we refer to in the argument set forth in this brief.

SUMMARY OF ARGUMENT

Since it has been considered settled that Section 6 does not confer even this limited immunity from the anti-trust laws upon labor unions, and since the full history of Section 6 has not been hitherto presented to this Court, we think it necessary at the outset to summarize the history upon which we rely, and which is

fully set forth and annotated in the following pages of this brief.

First: The text of Section 6 of the Clayton Act.

> "Sec. 6. That the labor of a human being is not a commodity or article of commerce. Nothing contained in the anti-trust laws shall be construed to forbid the existence and operation of labor, agricultural or horticultural organizations, instituted for the purpose of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the anti-trust laws." (Act of Oct. 15, 1914, c. 323, Sec. 6; 38 Stat. 731; 15 U. S. C. Sec. 17.)

Second: The Sherman Act and its enforcement prior to the adoption of Section 6.

The record will amply demonstrate that Section 6 was enacted in order to remedy the fact that the Supreme Court had construed the Sherman Act to hold that the activities of labor unions were subject to its prohibition.

Third: Section 6 of the Clayton Act in its original form as reported to Congress. Originally Section 6 contained what is now the first clause of the second sentence:

> "Nothing contained in the anti-trust laws shall be construed to forbid the existence and operation of labor, agricultural, horticultural organizations, instituted for the purpose of mutual help, and not having capital stock or conducted for profit or to forbid or restrain individual members of such organizations from carrying out the legitimate objects thereof."

The Committee report on the bill made it clear that the provision was only intended to protect the mere formation and existence of labor organizations.

Fourth: The Henry Amendment. This amendment in the House added the last clause of the present section, namely,

> "Nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade under the anti-trust laws."

This amendment was expressly offered and adopted because the bill as introduced did not go far enough in exempting labor unions from the law.

Fifth: The Thomas and McDonald Amendments. These proposed amendments in the House read as follows:

> "The provisions of the anti-trust laws shall not apply to agricultural, labor or consumers, fraternal, horticultural orders and associations."

They were advocated on the ground that the Henry Amendment did not accomplish the purpose of exempting labor unions, but both were rejected, after a statement by one of the sponsors of the Henry Amendment that the Henry Amendment in fact was stronger and better.

Sixth: The Culberson Amendment: This amendment in the Senate added the first sentence of Section 6:

> "That the labor of a human being is not a commodity or article of commerce."

It was proposed and adopted in the course of the Senate debate in order to overcome the doubts expressed by

certain Senators that the bill as passed by the House, with the Henry amendment, did not accomplish its purpose of giving labor unions a limited immunity.

Seventh: The Gallinger Amendment: This amendment in the Senate was a proposed substitute for the last sentence of Section 6 and read as follows:

> "Nor shall such organizations *when lawfully conducted* be held or construed to be illegal combinations or conspiracies in restraint of trade, under the anti-trust laws." (Italics indicate proposed change.)

This amendment was offered expressly because the bill as passed by the House exempted even unlawful activities of labor unions. It was twice voted down and repudiated in principle a third time by the Senate.

Eighth: The judicial decisions construing Section 6. The full legislative history was not considered by the Court in the decision holding that Section 6 applied to the activities of labor unions.

Ninth: Subsequent legislation by Congress. The decisions of this Court are inconsistent with subsequent statutes dealing with the subject of labor unions.

The evidence of Congressional meaning attached to Section 6 is thus richly ample. Specifically, the exemption of labor unions was a change made in the light of the earlier statute and its enforcement; the exemption was lacking in the Clayton bill in its original form; it was supplied in the House by an amendment proposed and adopted for that purpose; a claim to the need for a broader amendment was rejected in the House as unnecessary; it was supplied again by amendment in the Senate proposed and adopted for that pur-

pose; and an amendment to restrict its scope was twice rejected in the Senate as undesirable.

The rule of stare decisis cannot stand in the way of the correction demanded by this history because, first, the previous decision was made in ignorance of this history, and second, in subsequent legislation Congress has set forth a national policy which demonstrates that the error of the decision constitutes a serious social evil.

There is one further fact which underlies with emphasis the particular parliamentary events in the course of the passage of Section 6 of the Clayton Act. This is the fact that the issue of the limited immunity to be given to labor unions under the anti-trust laws was a major political issue from 1908 to 1914. It formed an important item in the platform of one of the political parties, and became its first order of business when that party came into power. It was one of the burning issues of the day. In short, the history of this law is not simply a case where Congress, acting within its general authority as a delegated representative body, passed a law, but rather where the entire machinery of representative government was invoked to secure the passage of a specific measure. Although labor won in Congress, it was defeated in the courts.

These forces compel a re-examination of the legislative history and a correction if error be shown. So Mr. Justice Frankfurter wrote in 1930:

> "But in one field of its operations the Sherman law has had clear results. There can be no doubt of its potency as a restraint upon the activities of organized labor. Here again, one must avoid attributing to law the consequences of economic forces and charging to Court decrees the inadequacies of labor leadership. But when all discounts

are made, it is common ground among students of the Sherman Law, as well as among industrial and labor leaders, that it has been one of the strongest influences counteracting trade unionism in the United States. Yet labor consistently denies that its activities are even subject to the Sherman Law. Though it has been judicially settled since 1908 that labor is amenable to the Sherman Law, the question is not closed for historians and it is wide open in the minds of labor. If moral assent to the authority of a law is of vital importance to the reign of law in a democracy, it can never be too late or too academic to examine the grounds on which rest even so well settled a doctrine as that the Sherman Law governs the activities of labor organizations." (Berman, Labor and the Sherman Act, p. xiv.)

ARGUMENT

I. THE INTENT OF CONGRESS CAN BE FOUND IN THE LEGISLATIVE RECORDS AND DEBATES.

We have indicated the nature of the guides which we have taken to ascertain the meaning to be given to Section 6 of the Clayton Act. They are succinctly set forth by Dean Landis:

> "Legislative history similarly affords in many instances accurate and compelling guides to legislative meaning. Successive drafts of the same Act do not simply succeed each other as isolated phenomena, but the substitution of one for another necessarily involves an element of choice often leaving little doubt as to the reasons governing such a choice. The voting down of an amendment or its acceptance upon the statements of its proponents again may disclose real evidence of intent. Changes made in the light of earlier stat-

utes and their enforcement . . . give evidence of a real and not a fictitious intent." Landis, *A Note on Statutory Interpretation* (1930), 43 Harv. L. Rev. 886, 889.

These guides were employed in the decision of this court in the case of *Dickinson Industrial Site v. Cowan*, decided this term, 308 U. S. —.

In the case of *United States v. Phelps*, 107 U. S. 320, this Court overruled its previous decision in *Shelton v. Collector, 5 Wall*, 113, upon the illuminating examination of the history of the statute in question made by the court below. (20 Blatchf. 129.)

The notable discoveries concerning Section 34 of the Judiciary Act which led this Court to overrule the century old rule of *Swift v. Tyson* were based upon the same guides. Warren, *New Light on the History of the Judiciary Act of 1789* (1923), 37 Harv. L. Rev. 49.

See, as further instances,

Piedmont Coal Co. v. Seaboard Fisheries, 254 U. S. 1, 11.
Dahnke-Walker Milling Co. v. Bondurant, 257 U. S. 282, 299.
Omaechavarria v. Idaho, 246 U. S. 343.

In the case of the anti-trust laws, we shall see that the legislative record is abundant and rich. Indeed, it presents an unusually complete disclosure of the draftsmen of Section 6, and the forces behind them.

II. THIS COURT HAS THE POWER TO CORRECT ERRONEOUS CONSTRUCTIONS OF CONGRESSIONAL INTENT.

It has been squarely held by this Court that the anti-trust laws do apply to the activities of labor unions.

Loewe v. Lawlor, 208 U. S. 274.
Duplex Printing Co. v. Deering, 254 U. S. 443.

The Court below relied expressly upon these decisions and the cases following them. *Leader v. Apex Hosiery*, 108 F. (2d) 71, 75.

We are therefore faced with the question of whether, assuming that a re-examination of the legislative history should disclose that Congress clearly intended to exempt labor unions and that the previous decisions of this Court were in error, this Court can overrule this settled construction of the law.

We believe it is by now well established that this Court has the power to correct previous decisions involving the construction of statutes where clear error is shown.

Helvering v. Hallock, 60 Sup. Ct. 444.
Neirbo Co. v. Bethlehem Shipbuilding Corp., 60 Sup. Ct. 153.
Burnet v. Coronado Oil & Gas Co., 285 U. S. 393, 406.

As the concurring opinion of Mr. Justice Reed states in the case of *Erie Railroad v. Tompkins*, 304 U. S. 64, 91, it is not necessary that the error must involve a question of the interpretation of the construction. Mr. Justice Reed stated:

> "In this Court, *stare decisis*, in statutory construction is a useful rule, not an inexorable command. (Citing cases.) It seems preferable to overturn an established construction of an act of Congress, rather than, in the circumstances of this case, to interpret the Constitution."

While Mr. Justice Brandeis in the *Erie Railroad* case rested his reversal of the long established doctrine

of *Swift v. Tyson* upon the fact that it was an unconstitutional construction, nevertheless he himself has recognized that the existence of a constitutional question is not necessary to the exercise of the power by this Court to correct itself. *Burnet v. Coronado Oil & Gas Co.*, supra.

In his dissenting opinion in the Burnet case, Mr. Justice Brandeis collected nine clear instances, dating from the history of this Court since 1830, in which previous constructions of statutes were expressly overruled. (283 U. S. at p. 406.)

Chicago and Eastern Railroad Co. v. Industrial Commissioner of Ill., 284 U. S. 296 (1932), overruling *Erie Railroad v. Collins*, 253 U. S. 77 (1920), and *Erie Railroad v. Szary*, 253 U. S. 86 (1920).

Gleason v. Seaboard Airline Railway Co., 278 U. S. 349 (1929), overruling *Freidlander v. Texas and Pacific Railway Co.*, 130 U. S. 416 (1889).

Lee v. Chesapeake & Ohio Railway Co., 260 U. S. 653 (1923), overruling *Ex Parte Wisner*, 203 U. S. 449 (1906).

Boston Store v. American Graphaphone, 246 U. S. 8 (1918), overruling *Henry v. Dick Co.*, 224 U. S. 1 (1912).

Rosen v. United States, 245 U. S. 467 (1918), overruling *U. S. v. Reid*, 12 How. 361 (1851).

Kountze v. Omaha Hotel Co., 107 U. S. 378 (1882), overruling *Stafford v. Union Bank of Louisiana*, 16 How. 135 (1854).

U. S. v. Phelps, 107 U. S. 320 (1883), overruling *Shelton v. Collector*, 5 Wall. 113 (1867).

Hornbuckle v. Toombs, 18 Wall. 648 (1873), overruling *Orchard v. Hughes*, 1 Wall. 73 (1863).

Gordon v. Ogden, 3 Pet. 33 (1830), overruling *Wilson v. Daniels*, 3 Dal. 401 (1798).

It is significant to note that one of these instances involves the statute in the case at bar, namely, the anti-trust laws. The decision in the *Boston Store v. American Graphaphone Company* case, supra, held that the monopoly granted by the patent laws did not protect restrictions upon the subsequent use and sale of the patented article against the ban of the anti-trust laws. It overruled the contrary decision in the *Henry v. Dick Company*, supra. Moreover, the decision of this Court in the case of *Standard Oil Co. v. United States*, 221 U. S. 1, introducing the "rule of reason" overruled in effect, though not expressly, the previous decisions of the Court, construing the statute to embrace every restraint of trade. *Freight Ass'n. Case*, 166 U. S. 318.

Even the strict adherence of the English Courts to the principle of stare decisis will give way in the face of newly discovered legislative action. See *Reed v. Bishop of Lincoln* [1892] A. C. 644, 655; *London Street Tramways v. London County Council* [1898] A. C. 375, 379.

III. THE HISTORY OF SECTION 6 OF THE CLAYTON ACT CONCLUSIVELY DEMONSTRATES THAT CONGRESS INTENDED TO GIVE LABOR UNIONS A LIMITED IMMUNITY FROM BEING HELD OR CONSIDERED TO BE COMBINATIONS IN RESTRAINT OF TRADE UNDER THE ANTI-TRUST LAWS.

A. Section 6 of the Clayton Act was intended to change the construction given to the Sherman Act by the courts.

In order to understand the provisions of Section 6 and how they came to be, we must examine the origin of the Sherman Act and its construction by the Courts.

We shall see, *first*, that there is substantial reason to believe that Congress in passing the Sherman Act did not intend it to apply to labor unions, *second*, that the decision of this Court applying the Sherman Act to labor unions rests upon doubtful grounds and, *third*, that it set in motion an organized movement to amend the Act to overcome the decision and to grant the exemption and immunity originally supposed to be contained in the law.

We take this background into account because it is to be noted that in his famous study on Section 34 of the Judiciary Act upon which the Supreme Court relied when it overruled the *Swift v. Tyson* rule, Mr. Warren laid stress upon the background of Section 34 as being in response to promises made at the time the Constitution was adopted, that the diversity citizenship jurisdiction of the Federal Courts would be narrowly restricted.

> Warren, *New Light on the History of the Federal Judiciary Act of 1789.* (1923), 37 Har. L. Rev. 49, 85.

In the *Dickinson Industrial Site* case, supra, this Court pointed out that the amendments were intended to eliminate the previous confusion between discretionary appeals and appeals as of right under the bankruptcy laws. And in the case of *Omaechevarria v. Idaho*, supra, this Court referred to the background of legislative attempts to settle the conflicting claims of sheep herders and cattlemen to the use of public lands.

1. Congress in passing the Sherman Act did not intend it to apply to labor unions.

In searching for the meaning which Congress intended to attach to the words used in the Sherman Act

it is important to bear in mind the purpose which the law was intended to accomplish. See, Landis, op. cit. supra.

The fundamental purpose of the Act has been stated by this Court. In the *Standard Oil* case, 221 U. S. 1, 50, it was said:

> "The debates show that doubt as to whether there was a common law of the United States which governed the subject in the absence of legislation was among the influences leading to the passage of the Act. They conclusively show, however, that the main cause which led to the legislation was the thought that it was required by the economic conditions of the times; that is the vast accumulation of wealth in the hands of corporations and individuals, the enormous development of corporate organizations, the facility for combination which such organizations afforded, the fact that the facility was being used, and that combinations known as trusts were being multiplied, and the widespread impression that their power had been and would be exerted to oppress individuals and injure the public generally."

In this statement, this Court repeated the words of the sponsors of the measure, Senator Sherman, who opened the debate on the bill with these words on its purpose:

> "It is to arm the Federal Courts within the limits of their Constitutional power, in checking, curbing and controlling the most dangerous combinations that now threaten the business, property and trade of the people of the United States. As for one, I do not intend to be turned from this course by fine spun Constitutional quibbles or by the plausible pretexts of associated or corporate wealth and power. . . . The popular mind is agitated with problems that may disturb the social

> order, and among them none is more threatening than the inequality of conditions of wealth and opportunity that has grown up within a single generation out of the concentration of capital into vast combinations to control production and trade and to break down competition." (21 Cong. Rec. 2457, 2460.)

At the time of the 1890 Congressional debate it could not be supposed that the menace to American industry came from organized labor. The Knights of Labor had passed its zenith and "by 1890 they were a negligible factor and in a short time then passed into the limbo of dead experiments." Beard, *History of the United S s*, p. 608. And the American Federation of Labor had only just been organized.

That the purpose of the law was to restrain business combinations which thwarted a conception of free competition is likewise clear from the numerous studies of historians and economists who have written on the subject of the anti-trust laws.

J. D. Clark, *Federal Trust Policy* (1931).
W. S. Stevens, *Industrial Combinations and Trusts* (1913).
M. B. Watkins, *Industrial Combinations and Public Policy* (1927).
Berle & Means, *The Modern Corporation and Private Property* (1937).
John Moody, *The Truth About the Trusts* (1904).
O. W. Knauth, *The Policy of the United States Towards Industrial Monopoly* (1914).
Chicago Conference on Trusts (1890).
W. Z. Ripley, *Trusts, Pools and Corporations* (Rev. Ed. 1916).

Placed against the background of its fundamental purpose, the history of the language used in the Sher-

man Act as it evolved out of Congressional debates amply supports the contention that the Sherman Act was not intended to apply to labor unions. See Berman, *Labor and the Sherman Act* (1934).

The original bill as adopted in the Senate condemned as illegal any combination "made with a view or which tends to advance the cost to the consumer of any such articles."[1]

As a consequence several Senators immediately pointed out that this provision would necessarily include labor unions and farmers' organizations because their activities were directed to increasing the wages and prices which they received and thus increase the price of the product to the consumer.

See statements of following,

> Senator George, 20 Cong. Rec. 1459; Senator Teller, 21 Cong. Rec. 2562; Senator Stewart, 2565. Berman, *op. cit. supra*, Ch. II.

Senator Sherman himself stated that he did not intend by his bill to reach labor unions. 21 Cong. Rec. 2562.

The issue was drawn in the debate between Senators Hoar and Edmunds.

Senator Edmunds argued that there should be no difference between the treatment of labor and capital. He said:

> "The fact is that this matter of capital . . . and of labor is an equation, and you cannot disturb

[1] S. 1, 51st Cong., 1st Sess. The bills and debates on the Sherman Act are collected in Bills and Debates in Congress Relating to Trusts, Senate Doc. No. 147, 57th Cong., 2d Sess. (1903) hereinafter referred to as *Bills and Debates*. The Sherman Bill is found at 1 *Bills and Debates*, 71.

one side of the equation without disturbing the other. . . . If we are to have equality, as we ought to have, if the combination on the one side is to be prohibited, the combination of the other side must be prohibited or there will be certain destruction in the end." (21 Cong. Rec. 2727, Berman, *op. cit. supra*, p. 25).

In reply, Senator Hoar stated the basic theory which makes the anti-trust laws inapplicable to labor unions.

"If I correctly understood the Senator from Vermont . . . he thought that the applying to laborers in this respect a principle which was not applied to persons engaged in the large commercial transactions which are chiefly aimed at by this bill was indefensible in principle. Now it seems to me that there is a very broad distinction, which, if borne in mind, will warrant this exception to the general provision of the bill.

"When you are speaking of providing to regulate the transactions of the men who are making corners in wheat, or in iron, or in woolen or in cotton goods, speculating in them, or lawfully dealing in them without speculation, you are aiming at a mere commercial transaction, the beginning and end of which is the making of money for the parties, and nothing else. . . . The laborer who is engaged lawfully and usefully and accomplishing his purpose in whole or in part in endeavoring to raise the standards of wages is engaged in an occupation, the success of which makes Republican government itself possible and without which the Republic cannot continue to exist.

"I hold, therefore, that as legislators we may constitutionally, properly and wisely allow laborers to make associations, combinations, contracts, agreements for the sake of maintaining and advancing their wages, in regard to which, as a rule, their contracts are to be made with large corporations who are themselves but an association or

combination or aggregation of capital on the other side. When we are permitting and encouraging that, we are permitting and encouraging what is not only lawful, wise and profitable, but absolutely essential to the existence of the commonwealth itself.

"When, on the other hand, we are dealing with one of the other classes, the combinations aimed at chiefly by this bill, we are dealing with a transaction, the only purpose of which is to extort from the community, monopolize, segregate, and apply to individual use, for the purposes of individual greed, wealth which ought properly and lawfully and for the public interest to be generally diffused over the whole community." (21 Cong. Rec. 2728).

As a consequence of this debate the Senate passed two amendments to the Sherman Bill which expressly exempted labor unions:

"That this Act shall not be construed to apply to any arrangements, agreements, or combinations between laborers, made with the view of lessening the number of hours of their labor or of increasing their wages; nor to any arrangements, agreements, associations or combinations among persons engaged in horticulture or agriculture, made with a view of enhancing the price of their own agricultural or horticultural products."[1]

The bill encumbered with numerous other amendments was then referred to the Judiciary Committee which reported it out in its present form. In the debate that followed the bill as reported out, no men-

[1] 1 *Bills and Debates*, p. 411. This amendment was passed on March 25, 1890, 21 Cong. Rec. pp. 2611-2612. On the next day the substance of this amendment was offered again by Senator Aldrich and promptly passed. 21 Cong. Rec. pp. 2654-2655. See Berman, *op. cit. supra*, pp. 21-22.

tion was made of labor unions. The entire attention of the Senators appeared to be directed to a single question:

> Was or was not the measure well constructed to restrain the undesirable activities of business combinations. (Berman, *op. cit. supra*, p. 31.)

In the Senate debate, after the bill was reported from the Judiciary Committee, Senator Hoar said that the bill was an answer to the complaints

> "from all parts and all classes of the country of these great monopolies which are a *menace to Republican institutions*. . . . We have affirmed the old doctrine of the common law in regard to all interstate and international *commercial* transactions." (Italics added.) (21 Cong. Rec. 3146.)

It requires no processes of psychoanalysis to urge that Senator Hoar, who had previously declared that the anti-trust laws could not apply to labor organizations because they were necessary to the existence of Republican institutions and were not commercial transactions, did not intend to include them in a bill directed toward organizations menacing Republican institutions and relating only to commercial transactions.

None of the Senators who had objected to the original bill on the ground that it might be construed to affect labor unions objected to the bill as reported out by the Judiciary Committee and the Senate as a whole

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* There is some question as to the authorship of the bill as reported out by the Judiciary Committee. Senator Hoar's claim has been disputed by Edmunds, who stated that it was the joint product of the entire Committee. See Hoar, *Autobiography of Seventy Years*, 364; Sen. Hearings, 62d Cong. pursuant to S. Res. 98, p. 2424; Clark, *Federal Trust Policy* (1931) p. 43; Boudin, *The Sherman Act and Labor Disputes* (1939) 39 Col. L. Rev., p. 1288-1293.

which had twice adopted the Sherman amendment, passed the bill in its final form.

The only reference in the House of Representatives to labor unions came in the remarks of Representative Stewart on June 11th, 1890, in a discussion of the bill as reported by the House and Senate conferees. Stewart criticized the bill on the ground that he thought that it would compel unwise competition among the railroads, and remarked:

> "Why do the laborers organize and combine to put up the price of labor, and so enhance the cost of everything to the consumer? Because of excessive competition. Yet my friend from Missouri Rep. Bland) does not propose to apply any remedy in that direction. Nothing more largely affects the cost of articles to every consumer . . . than the combinations of labor. Who complains of it? I do not. I think the laborer is justified, where competition is excessive . . . in entering into combinations for self-protection." (21 Cong. Rec. 5956.)

Hence, the only evidence in the House debate shows that the bill was not intended to apply to labor unions.

The legislative history of the Sherman Act has been soberly summarized by one scholar as follows:

> "During the debates upon the Sherman Bill, the broad language of the prohibition of all agreements in restraint of competition caused more than one legislator to ask reassurance that the law if enacted, would not affect labor unions and the New York *World* considered such to be so clearly the effect of the bill that it definitely opposed the measure on that very ground. Despite this forecast of the significance of the provisions of the proposed law the Congressional leaders were so confident that no such construction could be

placed upon the Act that they failed to eliminate the possibility by explicit proviso excepting combinations of labor." (J. D. Clark, *op. cit. supra*, p. 55.)

2. The decision of the Court construing labor organizations to be combinations in restraint of trade cannot be supported.

In criticizing the decision of the Court in the Danbury Hatters case (*Loewe v. Lawlor*, 208 U. S. 274), we are willing to concede that Congress made no express exemption of labor unions in the Sherman Act. But, by the same token, neither did it expressly include labor organizations and the decision of the Court construing the act to apply to labor unions is simply a piece of judicial construction that amounts to judicial legislation.

It is therefore fair to take the opinion of the Court upon its own reasoning and to demonstrate that it is without reasonable support.

In the Danbury Hatters case the Court held that the circulation of an unfair list by the Hatters' Union urging organized labor not to patronize concerns that sold hats manufactured by non-union employers was a restraint of trade within the meaning of the Sherman Act. To explain its construction of the law the Court in its opinion said as follows:

> "The Act made no distinction between classes. It provided that 'every' contract, combination, or conspiracy in restraint of trade was illegal. The records of Congress show that several efforts were made to exempt, by legislation, organizations of farmers and laborers from the operation of the Act and that all these efforts failed, so that the Act remained as we have it before us."

"In an early case, *United States v. Workingmen's Amalgamated Council*, 54 Fed. Rep. 994, the United States filed a bill under the Sherman Act in the Circuit Court for the Eastern District of Louisiana, averring the existence of a 'gigantic and widespread combination of the members of a multitude of separate organizations for the purpose of restraining the commerce among the several States and with foreign countries,' and it was contended that the statute did not refer to combinations of laborers. But the Court, granting the injunction, said:

> "'I think the Congressional debates show that the statute had its origin in the evils of massed capital; but when, the Congress came to formulating the prohibition, which is the yardstick for measuring the complainant's right to the injunction, it expressed it in these words: "Every contract or combination in the form of trust, or otherwise in restraint of trade or commerce among the several States or with foreign nations, is hereby declared to be illegal." The subject had so broadened in the minds of the legislators that the source of the evil was not regarded as material, and the evil in its entirety is dealt with. They made the interdiction include combinations of labor, as well as of capital; in fact, all combinations in restraint of commerce, without reference to the character of the persons who entered into them. It is true that this statute has not been much expounded by judges, but, as it seems to me, its meaning, as far as relates to the sort of combinations to which it is to apply, is manifest, and that it includes combinations which are composed of laborers acting in the interest of laborers.'" (208 U. S. 301-302.)

Thus, the Court construed the Act by resort to three grounds: first, that the language of the Act in terms applied to every combination in restraint of trade and

therefore afforded no room for exemptions; second, the efforts to obtain express exemptions from Congress had failed; and, third, judicial precedents sustained the application of the Act to unions.

A close analysis reveals that each of these grounds is without support.

First. The language of the Act is not conclusive. The absence of any express exemption is more reasonably explained (a) by the principle advanced by the sponsors of the Act that an anti-trust law in its nature deals only with business combinations; (b) the fact that the Senate twice passed amendments to the bill in its original form expressly exempting unions; and (c) the change in the language of the bill from its original form made express exemptions unnecessary.

Second. The fact that previous attempts had been made to amend the law is of little value. This Court has refused to give any considerable weight to the fact that Congress has failed to adopt amendments which would clarify what appeared to the courts to be a doubtful point.

Erie Railroad Co. v. Tompkins, supra.
Helvering v. Hallock, supra.

Equally important is the fact that the Court's reference to the records of Congress concerning prior legislation and efforts to amend the law is in error. The Court apparently relied upon the briefs of counsel for the manufacturer who inadequately set forth the legislative history.

48 Transcipts of Records (1907) No. 389, Brief for Plaintiffs in Error, pp. 30-34.

An actual study of the bills discloses that each of them, with one exception, were proposals to amend the

entire Sherman Act to strengthen it by making specific reference to illegal combinations to prevent competition and to raise prices. As can be readily understood from the history of the Congressional debate which we have set forth above, any such measure would have required a specific exemption of labor. The one exception (S. 1546, 55th Cong. 1897) merely provided for an amendment to the Sherman Act exempting labor and farmers' organizations. However, this bill was never even reported out of committee and in the absence of any consideration given to it, it is hardly any evidence whatsoever of Congressional intent. Berman, *op. cit. supra*, pp. 80-87.

Third. The precedent relied upon by the Court in the case of *United States v. Workmen's Amalgamated Council* is of exceedingly little value. That case was an application for an injunction, but at the time of the hearing the strike had terminated so that the case was in fact moot and no injunction should have issued. *Leader v. Apex Hosiery Co.*, 302 U. S. 656.

Moreover, the opinion of Judge Billings in the District Court is little better than an invective against labor unions and an unjustifiable revival of ancient doctrines of conspiracy. Judge Billings himself relied upon the decision of *People v. Fischer*, 14 Wend. 18, in which the Court ruled that workers combining to raise wages were unlawfully combining to ruin the business of their employer, even though each of them singly could have sought a wage increase, a ruling that by no means can be taken to represent valid legal doctrine. The case of *Commonwealth v. Hunt*, 4 Metc. (Mass.) 111 had set aside the doctrine that a mere combination of workers was in itself unlawful. And the decision of Judge Pound in the case of *Cleland v. Anderson*, 66 Neb. 252,

made prior to the *Danbury Hatters* case, afforded ample precedent to support the construction of the anti-trust laws as exempting labor unions. Judge Pound said:

> "If laborers are clearly within the general scope and reason of the Act, so that the provisions exempting them from its operation arbitrarily permit them to do acts in contravention of its terms and purposes which are forbidden to the public at large, there can be no doubt that the statute must fail. . . . We think the statute is constitutional and valid. In its letter and spirit it refers only to combinations and conspiracies of persons engaged in the manufacture, sale and transportation of goods, wares and merchandise to prevent or hinder competition and regulate and control prices. Any express exception of organizations of laborers intended to maintain or advance wages was not necessary to exempt them from its operation. The section in question is inserted, rather, out of abundance of caution to prevent judicial extension of the terms of the Act beyond its scope and purpose, than to grant a privilege or immunity to persons, who would otherwise fall within its terms.
>
> "The distinction between goods and merchandise produced by skill and labor and skill and labor which produced them is manifest and reasonable. The statute does not say that laborers who have goods, wares or merchandise, the product of labor, for sale may combine to advance or control the price, but only that the law designed to prevent combinations in restraint of trade in such article, when produced, shall not be construed to affect organization formed to regulate the wages or compensation of the laborer and skill which produced them." (66 Neb. pp. 259-261.)

The statement of Judge Billings, quoted by the Court to the effect that the subject had so broadened in the minds of the legislators as to include every com-

bination in restraint of trade is simply an arbitrary statement without any foundation in fact.

3. The decision of the Court set in motion an organized drive to amend the law.

The reaction to the decision of the Court in the *Danbury Hatters* case was immediate and intense. Organized labor issued a statement condemning the decision as being a perversion and distortion of the law. See Gompers, editorial, *American Federationist*, January, 1908, reprinted 2 Sen. Hearings, Interstate Commerce Committee, 63d Cong. pursuant to S. Res. 98 (1913), pp. 1740-1752. See also Clark, *op. cit. supra*, p. 55; Berman, *op. cit. supra*, p. 99. To labor the decision represented the culmination of the growing use of injunctions in labor disputes, a development of the judicial process that had taken sudden and swift form during the preceding years. See Frankfurter & Greene, *The Labor Injunction*, pp. 17-24. It should be noted that Section 20 of the Clayton Act was intended to meet the evil of injunctions and contempts entirely apart from the anti-trust laws.

Labor steadfastly believed that it had been given an immunity against the operation of the Sherman Act by the Senators who were responsible for its passage. Samuel Gompers testifying before the Senate Committee in 1913 said:

> "At the time of passage of the Sherman Act speaking with Senators Blair and George and others, but particularly my memory serves me well in regard to these two men, they gave me the actual assurance, and gave my associates the actual assurance that although the bill did not contain the language directly excluding the organizations of work-

ing people, yet by no means of construction could it be made to apply to voluntary associations of labor." (2 Sen. Hearings, *op. cit. supra*, p. 1740.)

During the course of the inquiry by the United States Commission on Industrial Relations, Commissioner Lennon answered an assertion by one of the most famous anti-labor lawyers of the day who said that the Sherman Act was intended to apply to labor unions:

> "I had the pleasure of interviewing Senator Sherman and Senator Plumb and a large number of gentlemen in the Senate at the time, and they did not look upon it in that way." 16 Report of U. S. Commission on Industrial Relations (1916) p. 10654.

During the debates on the Clayton Act, Congressman Towner, speaking of the passage of the Sherman Act, said:

> "When the reason for the omission of the Senate amendment (exempting labor unions) was demanded, Senator George and Vest stated that the amendment had not been included because it was not necessary." (51 Cong. Rec. 9547)

A reading of the debate on the Clayton Act will show that a motivating factor in the passage of Section 6 was the belief that the Act had been misconstrued when the Court held in the *Danbury Hatters* case that labor unions could be a combination in restraint of trade. See, especially, 51 Cong. Rec. 9540 and infra.

We have set forth the history of the Sherman Act and its enforcement to show that the decision of the Court construing it to apply to labor unions was ill-founded and gave rise to immediate and pressing demands for amendments to overcome this construction

and application. It is to be borne in mind that the decision in the Danbury Hatters' case did *not* hold that labor unions as such were combinations in restraint of trade nor was any decree entered dissolving the union. The decision condemned as a restraint of trade the activities of labor unions in the form of a boycott.

B. The legislative records amply demonstrate that Section 6 of the Clayton Act was intended to confer upon labor unions a limited immunity under the anti-trust laws.

1. The amendment of the Sherman Act became a major political issue.

The agitation to overcome the effect of the Danbury Hatters' case immediately took on the proportions of a National issue. The Democratic Party Convention of 1908 adopted a plank promising labor this relief:

> "The expanding organization of industry makes it essential that there should be no abridgment of the right of wage earners and producers to organize for the protection of wages and the improvement of labor conditions to the end that such labor organizations and their members should not be regarded as illegal combinations in restraint of trade." (51 Cong. Rec. 9544)

In 1912 the Democratic Platform repeated this pledge.

In his testimony before the Senate Committee, Gompers disclosed that in 1909, President Taft had promised to support legislation that would exempt labor unions. Gompers quoted Taft as follows:

> "He was of the opinion that these organizations of working people should not come under the oper-

ations of the Sherman anti-trust law." (2 Sen. Hearings, *op. cit. supra* 1765)

Two bills were introduced in 1913-1914 to amend the Act to exempt labor unions following the Danbury Hatters' case, the Wilson Bill [7] and the Bacon-Bartlett Bill.[8]

2. At the hearings on the Clayton Act, labor and progressive groups sought a limited immunity.

Voluminous hearings were held both by the House and Senate Committees prior to the introduction of the Clayton Bill. (Hearings before House Judiciary Committee, 63d Cong. 2d Sess. (1914); Sen. Hearings, *op. cit. supra.*

The important thing to note about these hearings is that they were primarily concerned with the tremendous growth of industrial combinations since 1890 despite the Sherman Act, and the consequent problem of making the Act effective in its purpose. The question of exempting labor unions was raised before both committees by representatives of organized labor.

In the Senate the following colloquy summarizes the position taken by organized labor:

> "Senator Cummins: Your view is that the anti-trust law which was intended to prevent restraints of trade and monopolies, ought not to apply at all to labor organizations."

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[7] H. R. 11033, 62d Cong. 1st Sess.:

"That nothing in the Act of July 2d, 1890 . . . is intended, nor shall any provision thereof hereafter be enforced so as to apply to organizations or associations not for profit and without capital stock, nor to the members of such organizations or associations as such." See testimony Gompers, 2 Sen. Hearings *op. cit. supra*, p. 1760.

[8] H. R. 1873, 63d Cong. 1st Sess. Text at 51 Cong. Rec. p. 9544.

Mr. Gompers: Yes, sir. (2 Sen. Hearings, p. 1762)

In the House of Representatives, after testifying, organized labor submitted a letter to clarify its position, which was sent to all members of Congress, in which it urged the following amendment:

> "That nothing contained in the anti-trust laws shall apply to fraternal, labor, consumers, agricultural, horticultural organizations, orders or associations instituted for the purpose of mutual help and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations, orders, or associations from carrying out the legitimate objects thereof." (House Hearings, p. 1808)

At the hearings, the only opponent of organized labor was Daniel Davenport, who was the attorney for the hat manufacturer in the *Danbury Hatters'* case and represented the American Anti-Boycott Association, an organization of employers opposed to the development of collective bargaining. But it is to be remembered that the President and the Congress elected in 1912 did not represent men like Davenport.[9]

By contrast, the testimony of Mr. Justice Brandeis, then a private citizen, indicates that this demand on the part of organized labor was supported by the progressive movements of the country. In his appearance before the Senate Committee, Mr. Brandeis opposed

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[9] "On the 4th day of March, 1913, the Democrats gained control of every branch of the national government." Congressman Barkley, 51 Cong. Rec. 9555, urging the adoption of the Henry amendment. See Landis, *op. cit. supra*, p. 891, where speaking of the British labor laws, he writes: "To deal, for example, with the Trades Disputes Act of 1906 without regard to the fact that it followed upon a Liberal-Labor victory, would be to thwart known legislative hopes and desires."

including labor under the regulations of the anti-trust laws: (Sen. Hearings, pp. 1180-1181).

> Senator Newlands: Do you think this movement for regulation of the unions of capital, will, or ought to be, followed by regulation of the unions of labor.
>
> Mr. Brandeis: I do not believe that the conditions in America are such that we are in any appreciable danger from the trade unions, except that danger of their unwisdom which is inherent in man . . .
>
> Senator Newlands: In other words, you do not think that the labor union constitutes the same menace to society that the capitalistic union does.
>
> Mr. Brandeis: I do not.
>
> Senator Newlands: But if it does, you would be prepared to act.
>
> Mr. Brandeis: Absolutely, I think. Society must protect itself."

3. Section 6 of the Clayton bill as originally introduced in the House only protected labor unions against dissolution.

Upon the hearings held in 1913-1914, the House Judiciary Committee reported out Section 6 of the Clayton Bill relating to labor unions in the following form:

> "that nothing in the anti-trust laws shall be construed to forbid the existence and operation of fraternal, labor, consumers, agricultural or horticultural organizations, orders, associations, instituted for the purpose of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations, orders, or associations from carrying out the legitimate objects thereof." (H. Rept. No. 627, 63d Cong. 2d Sess. to accompany H. R. 15657. In this form and as it went through Congress, Section 6 was numbered Section 7, and is so designated in the debates, which we quote *infra*.)

The report itself stated that this provision was only intended to protect the existence of labor unions against dissolution for violation of the anti-trust laws. It said:

> "In the light of previous decisions of the courts and in view of the possible interpretation of the law which would empower the Court to order the dissolution of such organizations and associations, your committee feels that all doubts should be removed as to the legality of these organizations and associations and that the law should not be construed in such a way as to authorize their dissolution by the courts under the anti-trust laws." (House Rep. 627, 63d Cong. 2d Sess. pp. 14-16; See also Minority Views)

Because of its narrow scope, the bill was attacked by several Congressmen. See, for example, statement of Congressman Floyd (51 Cong. Rec. 9166); McDonald (9249); Volstead (9082). But these remarks and the report were made prior to the introduction of the Henry Amendment. Cf. *Frankfurter and Green*, op. cit. supra, pp. 143-144.

4. The Henry Amendment was introduced to overcome the objections to Section 6 in its original form.

On June 1st, 1914, the so-called Henry Amendment was introduced on the floor of Congress when the debate on the bill was resumed. It added to Section 6 the following clause:

> "Nor shall such organizations, orders, or associations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade under the anti-trust laws." (51 Cong. Rec. 9538)

The debate on the amendment is illuminating and deserves full reading. It is to be found in 51 Congres-

sional Record at pp. 9538-9569. It is impossible to do full justice to the conclusive evidence of the intent of Congress which it discloses. It is complete in its reference to the original debates on the Sherman Act, the intended change in its enforcement, the drive for amendments, the political movements, and the authors of the text of the section.

The Henry Amendment, though nominally introduced by Mr. Webb, chairman of the Judiciary Committee, was in fact the work of Congressman Henry of Texas, chairman of the powerful Rules Committee. In introducing the amendment, Congressman Webb deprecrated its significance, but in the light of the actual authorship of the bill and the statement of its authors, his remarks are not to be given the usual weight accorded to the sponsor of an amendment. Congressman Henry explained his amendment so clearly and explicitly that we do not understand how any doubts could have arisen. We quote at length from it because it sets out all of the evidence of the history behind this bill:

> "Mr. Henry: Mr. Chairman, there has been so much controversy about what was intended when the original Sherman Anti-trust Law was passed that I think we should make clear just what was intended by this law. Some of us do not believe Section 7 as originally written by the Committee on the Judiciary expressed exactly what should be in this bill. Therefore, we took exception to the language of the first part of the paragraph in Section 7 and insisted there should be additional language. Among those who agreed that the language was not plain enough were the gentleman from North Carolina, Mr. Kitchin; the gentleman from Illinois, Mr. Hinebaugh; the gentleman from Illinois, Mr. Graham; the gentleman from Iowa, Mr. Towner; the gentleman from Maryland, Mr.

Lewis, and myself. We met to confer, and concluded that we ought to make the language more explicit. In that conference held in the committee room of the Committee on Rules, on the evening of May 21st, 1914, we agreed that this language should be added at the end of the first paragraph of Section 7, to wit, after the word 'thereof': 'Nor shall such organizations, orders, or associations or the members thereof be held or construed to be illegal combinations or conspiracies in restraint of trade under the anti-trust laws.'

"This language I have read is exactly the verbiage used by the gentleman from North Carolina (Mr. Webb) in the amendment offered by him and is the amendment agreed upon by Mr. Kitchin and our conferees in my office. The Committee on the Judiciary courteously accepted the language as prepared by the gentlemen in the conference, believing I assume that we were correct and that the original language used by them was not quite explicit. So we came to a satisfactory agreement with the House Judiciary Committee about this addition to the first part of Section 7, and, so far as I am concerned we are standing squarely with the committee for that paragraph with our added language. We called into the conference with us the heads of the American Federation of Labor and submitted this amendment to them, and said to them that we believed its adoption as an addition to Section 7 would clearly exempt labor organizations and farmers' organizations from the provisions of the anti-trust laws.

"They agreed with us; they called their counsel into the conference with them and with us and we all concurred that this amendment added to the paragraph of Section 7 would give these organizations what they have desired so long, and all they have been struggling for since the original enactment of the Sherman anti-trust law.

"In my judgment, when Congress was dealing with 'combinations in restraint of trade' it never

intended that the law should apply to labor organizations or farmers' organizations without capital and not for profit. The courts took a different view of it and construed the Act as it was never intended that it should be interpreted. The time has come when we can correct that error and write the language in the law as those gentlemen insist that it should be and should have been . . .

Congressman Henry then went on to recite previous proposals to exempt labor unions dating from the original debate on the Sherman Act and stated that the amendment carried out the purpose of each of these proposals. He continued:

"Now, gentlemen, organized labor has never asked that they be permitted under the law to commit crimes or to do unlawful things. They have never come to this government and pleaded for special privileges. They have never asked for anything to which they are not entitled at our hands. They have said that when we are dealing with conspiracies in restraint of trade and combinations and trusts it was never intended that the man who sells his labor—his God-given right—should be classed as conspiring against trade or unlawful combinations against the anti-trust laws. We are now about to correct that error, and make it plain and specific, by clear-cut and direct language that the anti-trust laws against conspiracies in trade shall not be applied to labor organizations and farmers' unions.

When, as chairman of the Committee on Rules, I had the honor to present the resolution bringing up for consideration this bill and the Democratic administration anti-trust program, it was my privilege to announce that section 7 of this anti-trust bill was not satisfactory to labor, and that I heartily concurred in that view; and that a plain provision clearly exempting them from the anti-trust laws would be presented and adopted by the House.

We have prepared such provision, and the gentleman from North Carolina (Mr. Webb) has presented it for us as labor and the farmers wish it. In the beginning of my remarks it is set out as approved by labor, the Committee on the Judiciary, the Democratic President, and skilled legal counsel for the wage earners. It is apparent that in a few brief moments it will be adopted by an overwhelming vote of the House. This executes the meritorious and just contract the Democratic Party has made with labor; and I rejoice that I am here to witness and participate in the triumph of the honorable men who win their bread by the sweat of their brow." (51 Cong. Rec. 9540-1951)

As this measure was debated Congressman after Congressman announced that at last the grave injustice committed by the Courts was to be corrected and the original intent of the sponsors of the Sherman Act to exempt labor unions was now to be made so positive that no Court could misconstrue it.

See, for example:

Bartlett,	51 Cong. Rec. 9542-9544
Konop,	51 Cong. Rec. 9545-9546
Towner,	51 Cong. Rec. 9548
Johnson,	51 Cong. Rec. 9549
Hensley,	51 Cong. Rec. 9551
Raker,	51 Cong. Rec. 9551-9552
Barkley,	51 Cong. Rec. 9552-9555
Hamlin,	51 Cong. Rec. 9556
Crosser,	51 Cong. Rec. 9555-9556
Casey,	51 Cong. Rec. 9557
Lewis (Md.),	51 Cong. Rec. 9565
La Follette,	51 Cong. Rec. 9573-9574

We would like to quote Congressman Lewis:

> "I challenge the gentlemen of this House to say that Congress would have ever said to the toiler: If you overstep the line and commit a tort, you shall be subject to threefold damages . . . There is a distinction between labor and a barrel of oil, a commodity: labor is never in truth a commodity." (51 Cong. Rec. 9565)

The Henry Amendment was adopted without a single dissent: 207 ayes, no nays (51 Cong. Rec. 9567).

5. The Thomas and McDonald Amendments proposing to grant labor a broader immunity were rejected as already embraced in the Henry Amendment.

During the debate on the Henry Amendment, the question was raised whether the Henry Amendment was sufficiently clear to express its purpose. These expressions of doubt came both from advocates of labor and from conservative members who did not believe that labor should be exempted. Their remarks have sometimes been believed to cast doubt upon the meaning of the Henry Amendment. See Rep. Thomas, 51 Cong. Rec. 9544; McDonald, 9545; cf. Frankfurter and Greene, *op. cit. supra*, p. 144. But this doubt is dispelled by the fact that two substitute proposals made by those who believed the Henry Amendment did not go far enough were rejected as unnecessary. The two proposals were dealt with together in the debate. Congressman Thomas proposed the following:

> "The provisions of the anti-trust laws shall not apply to agricultural, labor, or consumers, fraternal or horticultural organizations, orders and associations." (51 Cong. Rec. 9566)

Immediately after Congressman Thomas had proposed his amendment, Congressman McDonald offered the following substitute amendment to the Thomas Amendment, which would have made Section 6 read as follows:

> "Nothing contained in the anti-trust laws shall apply to trade unions or other labor organizations organized for the purpose of regulating wages, hours of labor or other conditions under which labor is to be performed, nor to any arrangements, agreements or combinations among persons engaged in horticulture or agriculture made with a view to enhancing prices of their own agricultural or horticultural products; nor to fraternal or consumers organizations, orders or associations, instituted for the purposes of mutual help and not having capital stock or conducted for profit." (51 Cong. Rec. 9566-9567)

As the debate closed upon both of these amendments, the challenge was squarely raised by Congressman Thomas who claimed that the Henry (or Webb Amendment as it was referred to during the debates) Amendment was a compromise:

> Mr. Thomas: . . . Mr. Chairman, the gentleman from Colorado (Mr. Keating) a few moments ago, in interrogating the gentleman from North Carolina (Mr. Webb) stated that this amendment is just what organized labor wanted. Is it not a fact that organized labor wanted to exempt organized labor entirely from the operation of the anti-trust law, such as is not here offered, and was not this Webb amendment simply the result of a compromise?
>
> Mr. Keating: If I had the time, Mr. Chairman, I would be very glad to answer that question.

Mr. Thomas: That could be answered by yes or no.

Mr. Keating: The amendment proposed by the gentleman from Kentucky (Mr. Thomas)——

Mr. Thomas: Mr. Chairman, I object to the gentleman's making a speech in my time. I simply asked him a question.

Mr. Keating: I have to answer the question clearly. The amendment offered by the gentleman from Kentucky (Mr. Thomas) was considered by the representatives of organized labor, and they decided that the proposition submitted by Mr. Webb, of North Carolina, was a stronger proposition and more beneficial to labor organizations than the proposition submitted by the gentleman from Kentucky. (Applause)

Mr. Thomas: Is it not a fact that the Webb amendment was accepted by organized labor only after they came to the conclusion that they could not get the amendment that I submitted?

Mr. Keating: The statement which I made—and I made it very deliberately, because it was repeated to me since this House met, by a leader of organized labor, who is qualified and authorized to speak for organized labor—was that the amendment as submitted by the gentleman from North Carolina (Mr. Webb) was better, from the viewpoint of organized labor, than the Thomas amendment, which had been previously considered by the labor leaders. (Applause)" (51 Cong. Rec. 9569)

Both amendments were immediately put to a vote and defeated.

Thus, two substitute amendments offered upon the ground that the language of the Act as it now stands does not go far enough in exempting labor unions,

were defeated upon the specific explanation that the language as adopted had in fact embraced the meaning of the proposed substitutes. It is impossible to imagine what clearer guide there can be to legislative intent. See, example given by Dean Landis, *op. cit. supra*, p. 889, n. 12.

6. The debate in the Senate confirms the meaning of Section 6 as passed in the House, and the Culberson amendment was passed to dispel all doubts.

The bill as passed by the House was transmitted to the Senate on June 5th, 1914, and Section 6 of the House bill was reported by the Senate Judiciary Committee to the Senate virtually unchanged.

In the early stages of the Senate debate several Senators took the position that Section 6 as so reported did not completely exempt labor unions. Once again the attack was a mingled one, made both by the opponents and the proponents of labor immunity. See, for example, Senator Jones, 51 Cong Rec. 14013, and Thomas, 14020.)

When the debate was resumed on September 2nd, 1914, the issue was drawn between Section 6 as reported by the Senate Judiciary Committee with the Henry amendment and an amendment proposed by Senator Cummins. The whole of this debate is contained in Volume 52 of the Congressional Record, pp. 14585 to 14591, and deserves reading in full.

The Cummins amendment opened with the sentence that the "labor of a human being is not a commodity or article or commerce," but it went on to define the acts which labor unions might do and, by so defining,

limited the broad exemption of its opening sentence."[10] (See Senator Cummins' response to Senator Gallinger's question, 51 Cong. Rec. 14585.)

Senator Cummins introduced his amendment with the statement that he believed the bill as reported did not completely exempt labor unions. He said:

> "I precede the amendment I have offered with the statement that ought to be in the law somewhere, for it would solve many of the problems which have vexed the courts and vexed those who have discussed the question, namely, that the labor of a human being is not a commodity or article of commerce.
>
> ". . . if we do not recognize the difference between the labor of a human being and the commodities

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[10] Amendment intended to be proposed by Mr. Cummins to the bill H. R. 15657, 63 Cong. 2d Sess., Aug. 19, 1914. The full text of this amendment is as follows:

"Sec. 7. That the labor of a human being is not a commodity or article of commerce, and nothing contained in the anti-trust laws shall be construed to forbid the existence and operation of labor organizations having for their objectives bettering the conditions, lessening the hours or advancing the position of labor, nor to forbid or restrain individual members of such organizations from carrying out said objectives in a lawful way; nor shall said laws be construed to prevent or prohibit any person or persons, whether singly or in concert, from terminating any relation of employment or from ceasing to work or from advising or persuading others in a peaceful, orderly way, and at a place where they may lawfully be, either to work or abstain from working, or even from withholding their patronage from a party to any dispute growing out of the terms or conditions of employment or from advising or persuading other wageworkers in a peaceful and orderly way so to do, and from paying or giving or withholding from any person engaged in such dispute any strike benefits or other monies or things of value, or from assemblying in a peaceful and orderly way for a lawful purpose in any place where they may lawfully be, or from doing any act or thing which might lawfully be done in the absence of such dispute. Nothing contained in said anti-trust laws shall be construed to forbid the existence and operation of agricultural, horticultural or commercial organizations instituted for mutual benefit without capital stock and not conducted for the pecuniary profit of either such organization or the members thereof, or to forbid or restrain such members from carrying out said objectives in a lawful way."

that are produced by labor and capital, we have lost the main distinction which warrants, justifies and demands that labor organizations coming together for the purpose of bettering the conditions under which they work, of lessening the hours which they work, and of increasing the wages for which they work, shall not be reckoned to be within a statute which is intended to prevent restraints of trade and monopoly." (51 Cong. Rec. 14585.)

Senator Culberson then suggested that Senator Cummins' objection could be met if the first sentence of his amendment were added to Section 6. When this suggestion was rejected by Senator Cummins, Senator Pittman took up the defense of Section 6 as reported and the following colloquy between him and Senator Cummins becomes extremely significant: (51 Cong. Rec. 14587-89).

"Mr. Pittman: Mr. President, I think the part of the Senator's amendment which describes labor and differentiates it from a commodity is very excellent; but I shall be unable to vote for the amendment because I do not believe it is as broad as the committee amendment. The bill as reported by the committee intends to exclude such organizations from the purview of this statute and I believe it does; and if I did not believe it did so I would offer an amendment to that effect. Here is the language: 'Nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade under the anti-trust laws.' Now if they cannot be held or construed to be illegal combinations or conspiracies then they are not subject to prosecution under this Act, or not subject to the jurisdiction of the court under this Act. The last clause of Section 7, which I have just read, carries out the very purpose of organized labor, that is to say, that this legislation has nothing to do with organized labor, that

it has nothing to do with organized farmers; that any unlawful acts committed in the pursuit of the objects of their organizations shall be tried and determined by other existing laws. That is what it means."

Mr. Cummins: "Mr. President, I simply wish to suggest to the Senator from Nevada that in my view he has stated just what Section 7 does not do. Section 7 still leaves every act of a labor union or any member of a labor union to be tested by the anti-trust law and its lawfulness must be determined by the provisions of the anti-trust law. That is precisely what I want to avoid by my amendment."

Mr. Pittman: "I am satisfied that the Senator believes that my construction of the committee amendment is wrong and that his construction of his amendment is right, because I know he is sincerely in earnest in this matter. It is simply a difference of opinion in regard to construction. I contend that the language of the committee section, 'instituted for the purposes of mutual help' is broader than the definition given to such societies by the Senator from Iowa. I further contend that unless his amendment contains this clause which is in the committee report, namely—

> 'nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade under the anti-trust laws'—

he does not remove them from the purview of this statute; but, on the contrary, subjects them to this statute, leaving to the court that tries the matter the determination as to whether or not the society comes within the definition laid down by the Senator.

Again, the Senator states in his amendment that nothing shall be done under this act to cause such societies to cease to exist. There are worse things against labor than the destroying even of their societies, so far as punishment is concerned. While

his amendment states that these unions shall not be dissolved if they come within this section, his amendment does not clearly say that these organizations shall not be tried or the members thereof shall not be tried under this act.

There are two distinct effects of the act. One of them looks to the dissolution of the union; the other one looks to the prosecution of the union or its members under the act. The Senator's amendment seems to me only to go to the first effect, the dissolution of the union, and does not protect the union or the members thereof against action under this act; while the Senate bill, or section 7, as reported by the committee, does have that effect when it says in very plain and distinct language that such organizations or the members thereof shall not be held or construed to be illegal combinations or conspiracies in restraint of trade under the anti-trust laws.

"I think that clause alone gives the greatest protection that the farmers and laborers of this country have under this act. I believe that clause, standing alone, would afford them the protection they are demanding. In plain language it says that those organizations and the members thereof shall not be subject to this act, and the amendment of the Senator from Iowa does not contain such a provision."

Senator Ashurst then tried to resolve the debate by suggesting that Senator Cummins take in the Henry amendment, insisted upon by Senator Pittman, as necessary to exempt labor unions. Although this was agreed to by Senator Cummins, both Senators Reed and Hughes stated that they would vote against the Cummins amendment because they believed that Senator Pittman was right and that the committee bill was broader than the amendment offered by Senator Cummins. A vote was then taken upon the Cummins

amendment and it was rejected. (51 Cong. Rec. 14590.)

Immediately thereafter Senator Culberson proposed the amendment to add the now famous clause. Just before the vote was taken, Senator Borah made the following statement:

> "I only want to say, however, that the time will come when Congress will have to modify its view upon that question in order to legislate upon subjects with reference to labor which we may desire to consider in the future. If labor is not a commodity nor an article of commerce in the sense in which that term is used in the Constitution, we shall be very much vexed at some time in the future when we are asked to do things for labor that we shall want to do to find the constitutional authority to do them. We are liable to find ourselves very much limited in our power to deal with labor questions should be finally adopt the view here expressed." (51 Cong. Rec. 14591.)

The Culberson amendment was carried without a record vote. (51 Cong. Rec. 14591.) Thus it becomes clear that, just as in the House the Henry amendment was added in order to meet the specific objection that the bill would not accomplish its intended purpose of exempting labor unions, so in the Senate the Culberson amendment was added for the very same reason, while at the same time, a substitute amendment narrowing the exemption was rejected. Although the significance of this clause has been ignored, and some have tended to regard it as a mere rhetorical question, the debates prove its actual significance.

The possible argument that the Senate may have believed that the Cummins amendment went further than Section 6 and was therefore undesirable is conclusively

rebutted by the statements made prior to its rejection and by the adoption of the Culberson amendment. In its context, the meaning of the statement that "labor is not a commodity" is simply that since the jurisdiction of Congress to enact the anti-trust laws depended upon the interstate commerce clause, by defining labor as being no part of commerce, Congress had taken it from under the jurisdiction of the anti-trust laws.

When the whole bill was reported to the House upon the conference report, Congressman Volstead expressed his fear that the Culberson amendment went too far in exempting unions from all federal legislation. (51 Cong. Rec. 16283.)

It should further be noted that in the House, even the critics of the Henry amendment conceded that the principle of labor not being a commodity carried with it as a necessary implication, its complete exemption from the provisions of the Sherman Anti-trust Law.

Congressman Murdoch, one of these critics, said:

> "I am in favor of a law here which will directly in terms exempt labor unions from the provisions of the Sherman Anti-trust Law. I do so because I believe labor is not a commodity." (51 Cong. Rec. 9568.)

Moreover, as we have pointed out above, this declaration is implied in the fundamental statement by Senator Hoar of the principle which exempts labor unions from any anti-trust laws even without any express exemption to that effect.

7. The defeat of the Gallinger Amendments in the Senate is final and conclusive proof that Section 6 was intended to give labor the limited immunity contended for herein.

Any doubts as to the intent of Section 6 as it passed both Senate and House are disposed of by the history of the Gallinger amendment. On September 1, 1914, the day before the debate on the Culberson amendment, Senator Gallinger brought up the following amendment:

> ". . . nor shall such organizations *when lawfully conducted* or the members thereof be held or construed to be illegal combinations or conspiracies in restraint of trade under the anti-trust laws." (51 Cong. Rec. 14528, 14,530) (italics added)

The Senator explained that the purpose of his amendment was to exempt unions only when they were doing something lawful. It was defeated. (51 Cong. Rec. 14530.)

On the same day, a few minutes later, Senator Gallinger renewed his attempt. He pointed out that the Senate Committee had inserted the word *lawfully* as it now appears in the first clause of the second sentence of Section 6, but had left the second clause, or the Henry amendment, untouched. He again proposed his amendment. The amendment was rejected. Senator Gallinger himself admitted that the defeat of the amendment showed that the insertion of the term "lawfully" does not qualify either the Henry or the Culberson amendment. (51 Cong. Rec. 14544.)

Senator Gallinger tried a third time. On September 2nd, the day the Culberson amendment was adopted, and just prior to the vote on the bill as a whole, he once more protested:

> "In view of the fact that the Senate deliberately refused to agree to the amendment I offered to the bill on yesterday, which amendment proposed to insert the word 'lawful' in Section 7, I find it impos-

sible to support the provision as it now stands. I do not believe that right-thinking laboring men and women want the privilege of doing anything that is unlawful.

"Mr. President, it is contended that 'the people' are demanding this legislation. That term 'the people' is always invoked to bolster up a doubtful cause in this body. For myself I have not heard from 'the people' to any extent in advocacy of this bill . . . Mr. President, what we need in this country today is more business and less laws; more conservatism and less cant; more sanity and less theory; more philosophy and less psychology." (51 Cong. Rec. 14608.)

Whereupon Senator Kern, in answer to the protest of Senator Gallinger, placed in the Record at that point an editorial from the "Outlook" of June 14, 1914. This editorial took the view that the provisions of the Clayton Bill properly exempted labor unions. It stated:

"The whole question whether labor unions should come under the operations of the anti-trust law rests upon the question of whether labor is merchandise or not . . . from the point of view of some economists, labor is regarded as a commodity . . . This is the only ground on which the application of the anti-trust laws to labor unions can be defended."

The bill was then passed. (51 Cong. Rec. 14609.)

IV. THE DECISION OF THE COURT THAT SECTION 6 OF THE CLAYTON ACT DID NOT GIVE LABOR UNIONS A LIMITED IMMUNITY FROM THE ANTITRUST LAWS HAS NO SUPPORT IN THE LEGISLATIVE HISTORY OF THE ACT.

As in the case of the Sherman Act, there is only one decision in which the Supreme Court considered the

effect of Section 6 of the Clayton Act. This is the case of *Duplex Printing Company v. Deering*, 254 U. S. 443.

This was an action for an injunction to restrain a boycott against products of the plaintiff's factory. The plaintiff manufactured printing presses and employed about 200 machinists. Defendants were officers of the local of the Machinists' Union in New York City. The union demanded a union shop, the eight-hour day, and the union scale of wages. When the company refused to agree to these terms, the union placed it upon the unfair list, and the machinists throughout the country adopted a boycott which included (1) warning customers not to purchase Duplex presses and threatening them with strikes if they did so; (2) securing the aid of teamsters who threatened to refuse to handle the company's presses; and (3) generally refusing to work upon the hauling, installing or repairing of the company's machines.

Both the District Court and the Court of Appeals had established that under the law of New York the conduct of the defendants was not illegal. (247 Fed. 192 and 252 Fed. 722.) The Supreme Court therefore placed no reliance upon the common law of restraints of trade. It said:

> "As we shall see, the recognized distinction between a primary and a secondary boycott is material to be considered upon the question of the proper construction of the Clayton Act, but, in determining the right to an injunction under that and the Sherman Act, it is of minor consequence whether either kind of boycott is lawful or unlawful at common law or under the statutes of particular states. Those acts, passed in the exercise of the power of Congress to regulate commerce among the states, are of paramount authority, and their prohi-

bitions must be given full effect irrespective of whether the things prohibited are lawful or unlawful at common law or under local statutes." (254 U. S. 466.)

Nor did the Court rely upon the use of any violent or lawless means by the union. It said:

"It is settled by these decisions (referring to Eastern State Retail Lumber Dealers Association and the Danbury Hatters cases) that such a restraint produced by peaceful persuasion is as much within the prohibition as one accomplished by force or threats of force; and it is not to be justified by the fact that the participants in the combination or conspiracy may have some object beneficial to themselves or their associates which possibly they might have been at liberty to pursue in the absence of the statute." (254 U. S. 467.)

The issue therefore was whether the Sherman Act as amended by Section 6 of the Clayton Act applied to labor unions. On this issue, Mr. Justice Pitney, speaking for the majority, said:

"As to Section 6, it seems to us its principal importance in this discussion is for what it does not authorize, and for the limit it sets to the immunity conferred. The section assumes the normal objects of a labor organization to be legitimate, and declares that nothing in the anti-trust laws shall be construed to forbid the existence and operation of such organizations or to forbid their members from lawfully carrying out their legitimate objects; and that such an organization shall not be held in itself —merely because of its existence and operation— to be an illegal combination or conspiracy in restraint of trade. But there is nothing in the section to exempt such an organization or its members from accountability where it or they depart from its normal and legitimate objects and engage in an

actual combination or conspiracy in restraint of trade. And by no fair or permissible construction can it be taken as authorizing any activity otherwise unlawful, or enabling a normally lawful organization to become a cloak for an illegal combination or conspiracy in restraint of trade as defined by the anti-trust laws." (254 U. S. 469.)

After discussing Section 6 the opinion continues to consider the effect of Section 20 of the Clayton Act. But this has no relation to Section 6. Section 20 in fact represented two previous separate bills which had been passed by the House in 1912 and were added to the Clayton Bill as a matter of parliamentary strategy. See H. R. 22591 and H. R. 23634, House Reports 612 and 613, 62d Cong. 2d Sess.; and Majority and Minority Reports on Clayton Bill, H. Rept. No. 627, 63rd Cong. 2d Sess. In many instances, the jurisdiction of the federal courts to issue injunctions rested upon diversity of citizenship and not upon the anti-trust laws. Cf. Frankfurter & Greene, *op. cit. supra*, p. 11.

We submit that Mr. Justice Pitney's treatment of the legislative intent behind Section 6 of the Clayton Act is a typical example of what Dean Landis has described as the overriding of legislative intent by strong judges.

The fact of the matter is that Mr. Justice Pitney did not consider the full record of the legislative history of Section 6 in its successive changes, the amendments that were proposed and the amendments that were rejected. The briefs of the parties did not contain any such analysis.

On its face, the opinion not only violates the text of the language of Section 6 itself, but its legislative history as well. *First*, in order to support its construction of the law, the Court has stricken out of Section 6, the

Henry amendment. It has done so by carrying over into the Henry amendment the very qualifications of Section 6 as it was originally introduced which it was the purpose of the Henry amendment to avoid. *Second*, the court has put into the law the very terms of the Gallinger proposal that was twice rejected by the Senate. *Third*, the court has completely ignored the effect of the declaration in Section 6 that labor is not a commodity or article of commerce and its significance as disclosed by the Senate debate.

In summary, the court's construction of Section 6 rendered it meaningless, nullified its purpose to effect a change in the Sherman Act as it had been construed before the enactment of Section 6; and left labor in exactly the same position as it was before it secured the pledge of the Democratic Party to which it gave its support in the 1912 elections, before it testified before Senate and House committees, and before it secured the necessary amendments in the course of the passage of the law to make sure of its immunity."

Dean Landis has remarked "The mutilated Clayton Act bears ample testimony to the 'day before yesterday' that judges insist is today." Landis, *op. cit. supra*, 892.

" It is interesting to note that in October, 1914, just after Section 6 had been adopted, Chief Justice Taft, when he was president of the American Bar Association, said:

> "There is language in this section, especially the last clause, which standing alone and without explanation, might seem to show Congressional intention to except such associations and their members altogether from the operation of the anti-trust acts. But such is evidently not the proper construction." (37 Proc. A. B. A. 1914, pp. 373-374.)

But it is to be noted that Mr. Justice Taft's construction depends upon glossing the term "such" in the Henry amendment to refer to "such organizations when lawfully carrying out the legitimate objects thereof." We submit that the term "*such*" refers to the first use of the word "organizations" in Section 6, which defines the subject organizations, and that the Taft construction is inconsistent with the history of the section.

V. THE EFFECT OF THE COURT DECISIONS IS TO CONSTRUE AND HOLD LABOR UNIONS TO BE COMBINATIONS IN RESTRAINT OF TRADE WHENEVER THE ACTIVITIES OF THE UNION ARE CONSIDERED TO BE UNDESIRABLE BY THE COURTS.

We assert that this is the proposition which the cases establish and we submit that on its face it is inconsistent with the history and language of Section 6, which, without qualification, states that labor unions are not to be construed or held to be combinations in restraint of trade under the anti-trust laws.

The doctrine upon which the courts have subjected union activities to the ban of the anti-trust laws is, as Mr. Justice Brandeis has suggested, in essence a variant of the doctrine of malicious combinations, and Brandeis has stated what this means (with Holmes and Clarke, JJ., concurring):

> "The objection to the doctrine of malicious combinations requires some explanation. By virtue of that doctrine damage resulting from conduct such as striking or withholding patronage or persuading others to do either, which without more might be dannum absque injuria because the result of trade competition, became actionable when done for a purpose which a judge considered socially or economically harmful and therefore malicious and unlawful. It was objected that, due largely to environment, the social or economic ideas of judges, which thus became translated into law, were prejudicial to a position of equality between workingman and employer; that due to their dependence upon the individual opinion of judges great confusion existed as to what purposes were lawful and what unlawful; and that in any event,

> Congress, not the judges, was the body which should declare what public policy in regard to the industry struggle demands." (Duplex case, 254 U. S., at pp. 484-485.)

1. The tests used by the courts in applying the anti-trust laws to unions menace the maintenance and extension of union standards.

The result of the application of the anti-trust laws to labor unions is that whenever the action of a labor union interferes with an employer's business in interstate commerce, it can be subjected to a judicial determination as to whether the interference is a restraint of trade under the anti-trust laws.

In order to demonstrate the evil which the Court's application of the anti-trust laws create, let us examine the criteria that have been employed.

Violence or acts criminal or unlawful in themselves have nothing to do with the question. *Duplex v. Deering, supra.* Nor is the mere interruption of the employer's business, which prevents the shipment of his goods into interstate commerce, determinative. *Coronado Cases,* 259 U. S. 344; 268 U. S. 295. The test is rather said to be whether the union intended to cut off the competition of the employer's goods in interstate commerce, and in doing so directly affected a substantial amount of competition. *Second Coronado Case,* 268 U. S. 295, 310.

Thus the Court said in the second Coronado case:

> "We think there was substantial evidence at the second trial in this case tending to show that the purpose of the destruction of the mines was to stop the production of nonunion coal and prevent its shipment to markets of other states than Arkansas, where it would by competition tend to reduce the

price of the commodity and affect injuriously the maintenance of wages for union labor in competing mines."

Of course, the specific action taken by the union must be related to a substantial movement or sale of goods in interstate commerce. *United Leather Workers v. Herkert*, 265 U. S. 457. It is to be noted that the difference between the findings of fact in the first and second Coronado cases is that in the second case there was evidence that the union's organizing drive against the coal company was expressly undertaken to prevent its competition with the unionized coal mines and that the production of the Coronado mines was substantially more than first supposed. *Second Coronado Case*, 268 U. S. 310, 312.

What this means is that if the action taken by the union is part of a plan to organize the unorganized sector of a particular industry in order to protect union standards against the competition of nonunion made goods, then there is an *intent* to restrain trade and the action of the union constitutes an unlawful combination under the anti-trust laws. Under this test it makes no difference whether the union is engaged in a strike or boycott.

The significance of the Supreme Court's decisions is graphically illustrated by two lower court decisions, the *United Mine Workers v. Red Jacket Co.*, 18 F. (2d) 839, and *Alco-Zander v. Amalgamated Clothing Workers*, 35 F. (2d) 203.

The Red Jacket case was an action for injunction brought against the United Mine Workers of America. This was one of 12 suits involving coal operators in the Southern West Virginia base, numbering in all some 316 companies. The facts showed that plaintiffs' mines

operated in "what is probably the most important non-union coal field in the United States." The struggle on the part of the union beginning in July, 1920, to unionize the plants, had brought about a violent conflict, in the course of which the Governor had declared martial law, and Federal troops had been sent in to preserve peace.

Judge Parker relied upon certain facts to show the relation between non-union fields and the rest of the industry which was unionized. Thus, in 1922, the union called a nation-wide strike because of its failure to reach a basic wage agreement in the central competitive field, and the strike was extended to the plaintiffs' mines. Although the strike was settled by the Cleveland wage agreement of August, 1922, it continued as against the non-union operators of West Virginia, except as to those who signed agreements with the union.

Judge Parker in his opinion was careful to point out that the United Mine Workers, no matter how great its control might become over the production of coal, would not become an unlawful organization. He relied upon Section 6 of the Clayton Act as interpreted by the Supreme Court in the *Duplex* case. Moreover, he conceded that a strike was "a lawful instrument in a lawful economic struggle or competition between employer and employees." But he came to the conclusion, "That the defendants have engaged in an actual combination and conspiracy in restraint of trade in a manner quite foreign to the normal and legitimate objects of the union." The Court held in effect that the object of the union was to unionize the West Virginia fields in order to end its competition with the union operators.

Judge Parker said:

"We do not mean, of course, that the union was unlawful of itself, but that defendants as officers of the union had combined and conspired to interfere with the production and shipment of coal by the non-union operators of West Virginia, in order to force the unionization of the West Virginia mines and to make effective the strikes declared pursuant to the policy of the union. The presence of this non-union field in West Virginia has been a hindrance to the union in its very contest with the operators. It has furnished arguments to the operators in wage negotiations and in time of strike has furnished coal which has supplied in part the needs of the country and weakened the effects of the strike. Since 1898 the union officials have recognized the importance of unionizing this field and with the exception of an interim during the World War have been engaged in an almost continuous struggle to force its unionization through interference with the business of the non-union operators. They have called strikes from time to time for this express purpose, and have spent hundreds of thousands of dollars in interfering with their business."

We wish to call the Court's attention to the Amalgamated Clothing Workers' case, since it shows how like a straightjacket the erroneous doctrine forbids unions from stabilizing a chaotic and disturbed industrial situation.

This was an action for an injunction brought by four Pennsylvania corporations against the Amalgamated Clothing Workers. The facts, as recited in the opinion of the Court, showed that at that time Philadelphia was a non-union field, with a production amounting to $80,000,000 a year. On the other hand, the New York garment industry had been unionized. Its production amounted to about $260,000,000 a year.

The existence of a large non-union market so close to the unionized New York market had been for some time a source of anxiety to the Amalgamated and its officers. They believed that because of union wage scales in New York, the New York manufacturers were unable to compete with the Philadelphia market, and that as a result, New York would either lose employment or be compelled to go back to a non-union basis. In fact, New York production had decreased while Philadelphia production had increased.

The plaintiffs quoted statements made in the organs of the Amalgamated and by its officials re-stating the foregoing facts. Thus: "The open shop in Philadelphia must cease, for the Amalgamated is not safe industrially as long as the open shop continues."

The Court said:

> "They leave no doubt whatever that the primary purpose of the campaign for the unionization of the Philadelphia market was the protection of the unionized markets in other States, particularly New York, and that, while the improvement of the condition of the workers in Philadelphia may have been present as a motive, it was at best a secondary and remote one." (35 F. (2d) at p. 205.)

While the Court admitted that the union ultimately intended to bring up the Philadelphia conditions to the union scale, it nevertheless issued an injunction because it said:

> "It is beyond all question that the purpose of the Amalgamated in this case is to stop the production of non-union clothing in Philadelphia. Unless and until the manufacturers there were willing to produce upon a union basis, under a union wage scale and upon union terms the Amal-

gamated did not intend to permit them to produce at all." (p. 208.)

We submit that the facts in the case at bar do not show a violation of the anti-trust law as it has been construed to apply to unions. But the prosecution of this case, the history of the law and its judicial construction, demonstrate the evil of denying labor the limited immunity which Congress intended to confer upon it.

2. The limits of the immunity granted by Section 6 of the Clayton Act have been indicated in certain decisions of this Court.

We have emphasized throughout this brief that the immunity which we contend Section 6 conferred upon labor unions is a limited one. Certain decisions of this Court applying the anti-trust laws to labor unions indicate these very limits.

United States v. Brims, 272 U. S. 549.
Local 167 v. United States, 291 U. S. 293.

And in the recent case of *United States v. Borden*, 60 Sup. Ct. 182, this Court refused to grant an immunity to agricultural organizations which had joined with processors and distributors to fix prices and exclude competitors.[11] It said:

"The right of these agricultural producers thus to unite in preparing for market and in marketing their products, and to make the contracts which are necessary for that collaboration, cannot be deemed to authorize any combination or conspiracy with other persons in restraint of trade that these producers may see fit to devise. In this in-

[11] Several of the recent indictments brought by the Department of Justice deal with situations of this kind.

stance, the conspiracy charged is not that of merely forming a collective association of producers to market their products but a conspiracy or conspiracies, with major distributors and their allied groups, with labor officials, municipal officials, and others, in order to maintain artificial and noncompetitive prices to be paid to all producers for all fluid milk produced in Illinois and neighboring States and marketed in the Chicago area, and thus in effect, as the indictment is construed by the Court below, 'to compel independent distributors to exact a like price from their customers' and also to control 'the supply of fluid milk permitted to be brought to Chicago.'" (pp. 190-191.)

VI. THE LABOR POLICY OF THE FEDERAL GOVERNMENT AS SET FORTH IN SUBSEQUENT LEGISLATION IS INCONSISTENT WITH THE DECISIONS OF THIS COURT DENYING LABOR A LIMITED IMMUNITY UNDER THE ANTI-TRUST LAWS.

We wish to argue under this point that the effect of the Supreme Court decisions which menace any attempt on the part of organized labor to organize unorganized sectors of a particular industry is directly in conflict with the labor policy of the Federal Government which encourages and promotes the full establishment of collective bargaining. We are not claiming that this subsequent legislation in any way repealed or amended Section 6 of the Clayton Act, but we do say that it indicates that Congress believes that labor does have a limited immunity under the anti-trust laws which permits it to take full action against unorganized parts of the industry without running afoul of the anti-trust laws. It is an old canon of construction that subsequent legislation dealing with the same

subject is relevant evidence upon the intent of Congress.

Thus in the recent case of *United States v. Lowden*, 60 Sup. Ct. 248, the question was whether under Section 5 (4) (b) of the Interstate Commerce Act the Interstate Commerce Commission was authorized by Congress to impose terms protecting the employees as a condition to its approval of mergers, leases and consolidations. The statute authorized the Commission "to promote the public interest."

In ascertaining the meaning to be attached to this general phrase, the Court looked to the whole body of legislation in which Congress had dealt with railroad employees, and it said:

> "The now extensive history of legislation regulating the relations of railroad employees and employers plainly evidences the awareness of Congress that just and reasonable treatment of railroad employees is not only an essential aid to the maintenance of a service uninterrupted by labor disputes, but that it promotes efficiency, which suffers through loss of employee morale when the demands of justice are ignored."

The same evidence is present in the case at bar.

In the preface to Berman's study of the Sherman Act, John R. Commons remarks:

> "It is evident from the recent rejection, by the Senate of the United States, of the President's nomination to the Supreme Court of Justice Parker, mainly on account of his opinion in the Red Jacket case, that public opinion, or at least, political opinion, is attacking the Supreme Court on account of its interpretation of the Sherman and Clayton Act." (p. xi.)

Within the last decade, the Federal Congress has enacted a series of measures, each of which protects and favors the growth of strong national labor unions, the establishment of industry wide standards through collective bargaining and the elimination of non-union conditions of economic exploitation and inequality.

1. Norris-LaGuardia Anti-Injunction Act.

In 1932 there was enacted the Norris-LaGuardia Act which placed very severe limitations upon the authority of the Federal judiciary to issue injunctions in cases involving or growing out of labor disputes. The public policy of this legislation is set forth therein in the following words:

> "Whereas, under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership associations, the individual unorganized worker is commonly helpless to exercise actual liberty of Congress and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, whereas although he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection . . ." (Act of Mar. 23, 1932, c. 90, Sec. 2; 47 Stat. 70, 29 U. S. C. Sec. 102.)

The Norris-LaGuardia Anti-Injunction Act was aimed at the same abuse which Congress intended to

eliminate through the Clayton Act, but had been thwarted by judicial misinterpretation. The anti-trust act had been used by corporations in their attempt to smash labor unions through the use of Federal injunctions. Section 20 of the Clayton Act had been completely ignored by the Courts in direct violation of Congressional intent as we have heretofore demonstrated. The Norris-LaGuardia Anti-Injunction Act was enacted in order that once and for all this judicial interference with the development and functioning of labor unions should be eliminated.

2. Railway Labor Act.

In 1934, Congress amended the Railway Labor Act to provide for the complete independence of employees on the railroads in the matter of self-organization. This Act expressly provides that:

> "Employees shall have the right to organize and bargain collectively through representatives of their own choosing . . . No carrier, its officers or agents, shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees." Act of June 21, 1934, c. 691, Sec. 2; 48 Stat. 1186; 45 U. S. C. Sec. 152.)

3. National Labor Relations Act.

In 1935 Congress enacted the National Labor Relations Act which has for a declaration of findings and policy the following:

> "It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial objections to the free flow of com-

merce and to mitigate and eliminate these objections when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection." (Act of July 5, 1935, c. 372, Sec. 1; 49 Stat. 449; 29 U. S. C. Sec. 151.)

In addition, the National Labor Relations Act expressly protects the rights of employees to self-organization by providing in Section 7 thereof that:

"Employees shall have the right to self-organization, to form, join or assist labor organizations to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection."

The Act further provides in Section 13 that:

"Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike."

4. Public Contracts Act.

In 1935 Congress enacted the Public Contracts Act which specifically authorizes the Secretary of Labor to fix minimum wage standards for industries, which standards must be complied with before private concerns can bid for Government contracts. (Act of June 30, 1936, c. 1, Sec. 1; 49 Stat. 2036; 41 U. S. C. Sec. 35.) This measure was adopted because a few corporations in each industry were breaking down wage and other standards of an entire industry through their ability to cut wages and thereby underbid their com-

petitors for Government contracts. In establishing a fair minimum standard for all concerns desiring to bid for Government contracts, Congress sought to protect the wage standards achieved by unions through collective bargaining agreements.

5. Fair Labor Standards Act of 1938.

In 1938, Congress enacted the Fair Labor Standards Act of 1938 which fixed minimum wages and maximum hours for all industry either engaged in or which affected interstate commerce. (Act of June 25, 1938, c. 676; 52 Stat. 1060; 29 U. S. C. Sec. 202.) This legislation was based upon a similar need to eliminate destructive competition which thrived upon low wages and sub-standard working conditions in order to protect the wage standards of union-organized portions of the industry.

6. Summary of Recent Federal Labor Legislation.

The Congressional Acts cited above are not isolated enactments. Each constitutes a thread in a definite pattern of social policy. Congress has determined, as demonstrated in this legislation, that the welfare of the people and the preservation of our basic institutions demand that the workers be free of judicial and employers' restraints in the exercise of their right to organize into unions of their own choosing for the purposes of collective bargaining and other concerted activities for mutual aid or protection.

Under this legislative program, labor has been assured of its right to live and grow. Congress in effect has determined that, in balancing the economic interests involved, the welfare of the people demands that labor be permitted to develop strong unions that will

provide a more equitable distribution of the national income, even though this may bring, at times, inconveniences to the public or injuries to specific employers. It is anticipated and intended that under this national policy:

(a) Labor, free to organize, will develop national unions able to cope with modern aggregates of capital to obtain for the workers and their families their fair share of the bounties of the country; and

(b) Unions will be free to exercise their economic power against the employers who are determined to break down and destroy the unions and the standards which they seek to establish, thereby assuring a competitive protection to the employers who desire to cooperate through collective bargaining and comply with the national policy of the country.

It is significant that this policy, in its basic outlines, was advanced and defended by the statesmen who framed and passed the Sherman Act.

CONCLUSION

We have submitted the legislative history of the Sherman and Clayton Acts and an analysis of the major decisions of this Court which have defined the extent to which labor unions are to be held within the prohibitions of such Acts, notwithstanding the clear intent of Congress to the contrary.

We have pointed out that in effect these decisions have held that labor unions may not undertake to enforce economic pressures against a non-union employer for the purpose of making such employer meet the prevailing industrial standards in the industry which the

union has established through collective bargaining. The judicial doctrine, founded upon error, has permitted the Courts to proscribe, within their untrammeled discretion, the specific activities of labor unions that they considered undesirable.

The application of this doctrine under our present economic conditions would revive the anti-trust laws as the most serious threat to the development and functioning of labor organizations. For this reason we respectfully urge this Honorable Court to re-examine these judicial decisions in order that the original intent of Congress to grant labor unions a limited immunity from the anti-trust laws may be effectuated.

Respectfully submitted,

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IN THE

Supreme Court of the United States

No. 638

October Term, 1939.

APEX HOSIERY COMPANY,

Petitioner,

against

WILLIAM LEADER and AMERICAN FEDERATION OF FULL FASHIONED HOSIERY WORKERS, PHILADELPHIA BRANCH No. 1, LOCAL 706,

Respondents.

SUPPLEMENTAL MEMORANDUM FOR WORKERS DEFENSE LEAGUE AS *AMICUS CURIAE*

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March 30, 1940.

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MAY IT PLEASE THE COURT:

It may aid this Court in determining the validity of the proposition advanced in the brief of this *amicus*, filed March 22nd, to consider what are its corrollaries.

That proposition is:

"That a labor union, by means of a strike, may intentionally and substantially restrain interstate commerce, without thereby rendering either it or its members liable to triple damages under Section 4 of the Clayton Act, provided that the ultimate purposes of such strike is the exercise of the rights of labor declared by the Norris-

La Guardia Act, and that such restraint of interstate commerce is merely the necessary and proper means for the exercise of such rights.'"*

There would seem to be two direct corrollaries to this proposition. These are:

(1) Assuming that, under such circumstances the resulting restraint of interstate commerce is not a violation of Section 1 of the Sherman Anti-Trust Act, there can be no liability to triple damages under Section 4 of the Clayton Act merely because the means by which such restraint may be effected may be illegal.

Section 4 of the Clayton Act imposes liability for triple damages to "any person who shall be injured in his business or property by reason of anything forbidden under the antitrust laws."

Since, under the assumed circumstances, the resulting restraint of trade is not forbidden by the antitrust laws, any injury to the employer by reason of the unlawful means by which such restraint is accomplished is not an injury "by reason of anything forbidden under the antitrust laws."**

Recognition of this involves no approval of such unlawful means, whether the alleged unlawful means be a "sitdown strike", or other invasion of property rights, or violence, as here claimed by petitioner. It merely

* It is essential to note that in the above proposition, the qualifying words "necessary and proper means for the exercise of such rights" refer to the restraint of commerce, itself, and not to the means by which such restraint may be accomplished.

** Indeed, even were such restraint of trade forbidden by the antitrust laws, it seems clear that triple damages could only be recovered for the results of such restraint of trade, and not for such damages as might independently result from the unlawfulness of the means of such restraint.

recognizes that, *in the absence of any unlawful restraint* of interstate commerce, there is no violation of the anti-trust laws, and that triple damages cannot attach merely because unlawful means are used for a *lawful* restraint. It simply leaves to the State courts, where it naturally belongs, the remedy for the use of such unlawful means, and there is no reason to assume that there is any lack of power in the State courts to afford such remedies.

It is true that this Court stated in *Duplex Printing Co. v. Deering*, 254 U. S. 443, at p. 465, that

> "The accepted definition of a conspiracy is, a combination of two or more persons by concerted action to accomplish a criminal or unlawful purpose, or to accomplish some purpose not in itself criminal or unlawful by criminal or unlawful means. * * * If the purpose be unlawful, it may not be carried out even by means that otherwise would be legal; and although the purpose be lawful, it may not be carried out by criminal or unlawful means."

In other words, it may be that the means, such as a sitdown strike, used by a union for the assumed lawful restraint of trade, may in itself, under certain circumstances, constitute an unlawful conspiracy. The point is that neither a sitdown strike, or other invasion of property rights, or even violence, are in themselves "anything forbidden under the antitrust laws." Therefore, even though they may constitute a conspiracy, such conspiracy can impose no liability for triple damages under Section 4 of the Clayton Act, though the union may remain liable in the State courts for ordinary compensatory damages as in the case of any unlawful conspiracy.

2. A union, without becoming liable to triple damages, may combine with an industry to restrain interstate commerce, as a means by which the union may accomplish the ultimate purpose of establishing the rights of labor declared by the Norris-La Guardia Act, even if the result of such restraint of commerce is to afford protection to the friendly industry from the competition of such other industry, against which such restraint of interstate commerce is used as a means of obtaining recognition of those rights.

There is nothing in the Norris-La Guardia Act either expressly or impliedly forbidding a union from accepting the aid of a friendly industry to effect the purposes of that Act. Such a combination, by the union and an industry to restrain interstate commerce would only be unlawful if its ultimate purpose were not, in fact, to establish the union's rights, but were simply a cloak for effecting commercial objectives, such as control of prices or monopoly of markets, purely for commercial purposes.

Respectfully submitted,

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March 30, 1940.

pp. 2,8,15,16,18,19,20,24,5,6,10,11,23,20
→6 dissent

SUPREME COURT OF THE UNITED STATES.

No. 638.—October Term, 1939.

Apex Hosiery Company, Petitioner, vs. William Leader and American Federation of Full-Fashioned Hosiery Workers, Philadelphia, Branch No. 1, Local No. 706.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

[May 27, 1940.]

Mr. Justice Stone delivered the opinion of the Court.

Petitioner, a Pennsylvania corporation, is engaged in the manufacture, at its factory in Philadelphia, of hosiery, a substantial part of which is shipped in interstate commerce. It brought the present suit in the federal district court for Eastern Pennsylvania against respondent Federation, a labor organization, and its officers, to recover treble the amount of damage inflicted on it by respondents in conducting a strike at petitioner's factory alleged to be a conspiracy in violation of the Sherman Anti-Trust Act. 26 Stat. 209, 15 U. S. C. § 1. The trial to a jury resulted in a verdict for petitioner in the sum of $237,310, respondents saving by proper motions and exceptions the question whether the evidence was sufficient to establish a violation of the Sherman Act. The trial judge trebled the verdict to $711,932.55, in conformity to the provision of the Sherman Act as amended by § 4 of the Clayton Act, 1914, 38 Stat. 731, 15 U. S. C. § 15, and gave judgment accordingly. The Court of Appeals for the Third Circuit reversed, 108 F. (2d) 71, on the ground that the interstate commerce restrained or affected by respondents' acts was unsubstantial, the total shipment of merchandise from petitioner's factory being less than three per cent. of the total value of the output in the entire industry of the country, and on the further ground that the evidence failed to show an intent on the part of respondents to restrain interstate commerce. We granted certiorari February 26, 1940, the questions presented being of importance in the administration of the Sherman Act.

The facts are undisputed. There was evidence from which the jury could have found as follows: Petitioner employs at its Philadelphia factory about twenty-five hundred persons in the manufacture of hosiery, and manufactures annually merchandise of the value of about $5,000,000. Its principal raw materials are silk and cotton, which are shipped to it from points outside the state. It ships interstate more than 80 per cent. of its finished product, and in the last eight months of 1937 it shipped in all 274,791 dozen pairs of stockings. In April, 1937, petitioner was operating a non-union shop. A demand of the respondent Federation at that time for a closed shop agreement came to nothing. On May 4, 1937, when only eight of petitioner's employees were members of the Federation, it ordered a strike. Shortly after midday on May 6, 1937, when petitioner's factory was shut down, members of the union, employed by other factories in Philadelphia who had stopped work gathered at petitioner's plant. Respondent Leader, president of the Federation, then made a further demand for a closed shop agreement. When this was refused Leader declared a "sit down strike". Immediately, acts of violence against petitioner's plant and the employees in charge of it were committed by the assembled mob. It forcibly seized the plant, whereupon, under union leadership, its members were organized to maintain themselves as sit-down strikers in possession of the plant, and it remained in possession until June 23, 1937, when the strikers were forcibly ejected pursuant to an injunction ordered by the Court of Appeals for the Third Circuit in *Apex Hosiery Co.* v. *Leader*, 90 F. (2d) 155, 159; reversed and dismissal ordered as moot in *Leader* v. *Apex Hosiery Co.*, 302 U. S. 656.

The locks on all gates and entrances of petitioner's plant were changed; only strikers were given keys. No others were allowed to leave or enter the plant without permission of the strikers. During the period of their occupancy, the union supplied them with food, blankets, cots, medical care, and paid them strike benefits. While occupying the factory, the strikers wilfully wrecked machinery of great value, and did extensive damage to other property and equipment of the company. All manufacturing operations by petitioner ceased on May 6th. As the result of the destruction of the company's machinery and plant, it did not resume even partial manufacturing operations until August 19, 1937. The record discloses a lawless invasion of petitioner's plant and destruction of its property

by force and violence of the most brutal and wanton character, under leadership and direction of respondents, and without interference by the local authorities.

For more than three months, by reason of respondents' acts, manufacture was suspended at petitioner's plant and the flow of petitioner's product into interstate commerce was stopped. When the plant was seized there were on hand 130,000 dozen pairs of finished hosiery, of a value of about $800,000, ready for shipment on unfilled orders, 80 per cent. of which were to be shipped to points outside the state. Shipment was prevented by the occupation of the factory by the strikers. Three times in the course of the strike respondents refused requests made by petitioner to be allowed to remove the merchandise for the purpose of shipment in filling the orders.

Section 1 of the Sherman Act provides: "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States or with foreign nations is hereby declared to be illegal." Only a single question is presented by the record for our decision, whether the evidence which we have detailed, whose verity must be taken to be established by the jury's verdict, establishes a restraint of trade or commerce which the Sherman Act condemns.

It is not denied, and we assume for present purposes, that respondents by substituting the primitive method of trial by combat,[1] for the ordinary processes of justice and more civilized means of deciding an industrial dispute, violated the civil and penal laws of Pennsylvania which authorize the recovery of full compensation and impose criminal penalties for the wrongs done. But in this suit, in which no diversity of citizenship of the parties is alleged or shown, the federal courts are without authority to enforce state laws. Their only jurisdiction is to vindicate such federal right as Congress has conferred on petitioner by the Sherman Act and violence, as will appear hereafter, however reprehensible, does not give the federal courts jurisdiction.

At the outset, and before considering the more substantial issues which we regard as decisive of this cause, it is desirable to remove from the field of controversy certain questions which have been

[1] This Court has recently characterized the encouraging, aiding and abetting the strikers in similar unlawful acts as a "high-handed proceeding without shadow of legal right", see National Labor Relations Board *v.* Fansteel M. Corporation, 306 U. S. 240, 252.

much argued here and below, but which we think, in the circumstances of the present case, are irrelevant to decision. We find abundant support for petitioner's contention that the effect of the sit down strike was to restrict substantially the interstate transportation of its manufactured product, so as to bring the acts of respondents by which the restriction was effected within the reach of the commerce power if Congress has seen fit to exercise it. Cessation of petitioner's manufacturing operations, which respondents compelled, indubitably meant the cessation of shipment interstate. The effect upon the commerce resulted naturally and inevitably from the cause. The occupancy of petitioner's factory by the strikers prevented the shipment of the substantial amount of merchandise on hand when the strike was called. In point of the immediacy of the effect of the strikers' acts upon the interstate transportation involved and of its volume, the case does not differ from many others in which we have sustained the Congressional exercise of the commerce power. The national power to regulate commerce is not restricted to that which is nationwide in its scope. Here the strikers' activities were as closely related to interstate commerce and affected it as substantially as numerous other activities not in themselves interstate commerce which have nevertheless been held to be subject to federal statutes enacted in the exercise of the commerce power.[2] More recently, where the statute was by its terms applicable and the question was of Congressional power, we have sustained the application of the Wagner Act, 49 Stat. 449, 29 U. S. C. §§ 151-166, regulating labor relations "affecting" interstate commerce to situations no more closely related to the commerce than these, and where the interstate commerce affected was no greater in volume.[3] And in the application of the Sherman Act, as we have recently had occasion to point out, it is the nature of the restraint and its effect on interstate commerce and not the amount of the commerce which are the tests of violation. See *United States* v. *Socony-Vacuum Oil Co., Inc.*, No.

[2] Montague v. Lowry, 193 U. S. 38; Baltimore & Ohio R. R. Co. v. Interstate Commerce Commission, 221 U. S. 612, 619; Southern Ry. Co. v. United States, 222 U. S. 20; Houston, E. & W. Texas Ry. Co. v. United States, 234 U. S. 342; Chicago Board of Trade v. Olsen, 262 U. S. 1; Kentucky Whip & Collar Co. v. Illinois Cent. R. Co., 299 U. S. 334; United States v. Carolene Products Co., 304 U. S. 144, 147; Currin v. Wallace, 306 U. S. 1; Mulford v. Smith, 307 U. S. 38.

[3] National Labor Relations Board v. Jones & Laughlin Steel Corp., 301 U. S. 1, 38-40; National Labor Relations Board v. Fruehauf Trailer Co., 301 U. S. 49; National Labor Relations Board v. Friedman-Harry Marks Clothing Co., 301 U. S. 58; Santa Cruz Packing Co. v. National Labor Relations Board, 303 U. S. 453, 463 *et seq.*; Consolidated Edison Co. v. National Labor Relations

346-347, this term, note 59. Cf. *National Labor Relations Board* v. *Fainblatt*, 306 U. S. 601, 606.

We think also, as petitioner contends, that the jury's verdict must be taken as a finding supported by evidence that respondents intended to prevent petitioner's shipments in interstate commerce in the sense that respondents must be taken to have intended the natural and probable consequences of their acts. The trial court left it to the jury to say whether the respondents intended to restrain petitioner's interstate shipments, and charged that in a suit to recover damages for violation of the Sherman Act it was necessary for it to find an intent on the part of respondents to cause the prohibited restraint of commerce,[4] but that such intent might be inferred from their acts in stopping petitioner's manufacture of a product largely and regularly shipped in interstate commerce. Concededly the purpose of the strikers and their principal objective was to compel petitioner to yield to their demands for a union shop, but it is a matter of common knowledge and experience that the stoppage of a large manufacturing plant, which the strikers did intend, whose product is distributed generally to consumers throughout the country, would prevent its shipments in interstate commerce. We must take it from the jury's verdict that this was known to the strikers as well as to others. In addition there was specific testimony that the strikers refused to permit the withdrawal of the finished merchandise from petitioner's factory for shipment.

But the Sherman Act admittedly does not condemn all combinations and conspiracies which interrupt interstate transportation. *United Mine Workers* v. *Coronado Coal Co.*, 259 U. S. 344 (First *Coronado* case); *United Leather Workers* v. *Herkert*, 265 U. S. 457 (*Leather Workers* case). In *In re Debs*, 158 U. S. 564, 600, this Court declined to consider whether the stoppage of trains on an interstate railroad resulting from a strike, was a violation of the Sher-

Board, 305 U. S. 197; National Labor Relations Board v. Fainblatt, 306 U. S. 601, 604 *et seq.* See National Labor Relations Board v. Crowe Coal Co., 104 F. (2) 633; National Labor Relations Board v. The Good Coal Co., 110 F. (2d) 501.

[4] United States v. Trans-Missouri Freight Assn., 166 U. S. 290, 342; Addyston Pipe & Steel Co. v. United States, 175 U. S. 211, 243; United States v. Patten, 226 U. S. 525, 543; Duplex Printing Press Co. v. Deering, 254 U. S. 443, 468; Industrial Association of San Francisco v. United States, 268 U. S. 64, 77; Bedford Cut Stone Co. v. Journeymen Stone Cutters Assn., 274 U. S. 37; cf. National Labor Relations Board v. Jones & Laughlin, 301 U. S. 1, 40.

man Act—a question which it has not since been called on to decide.[5] It is not seriously contended here that a conspiracy to derail and rob an interstate train, even though it were laden with 100,000 dozen pairs of stockings, necessarily would involve a violation of the Sherman Act. This Court has never applied the Act to laborers or to others as a means of policing interstate transportation, and so the question to which we must address ourselves is whether a conspiracy of strikers in a labor dispute to stop the operation of the employer's factory in order to enforce their demands against the employer is the kind of restraint of trade or commerce at which the Act is aimed, even though a natural and probable consequence of their acts and the only effect on trade or commerce was to prevent substantial shipments interstate by the employer.

A point strongly urged in behalf of respondents in brief and argument before us is that Congress intended to exclude labor organizations and their activities wholly from the operation of the Sherman Act. To this the short answer must be made that for the thirty-two years which have elapsed since the decision of *Loewe* v. *Lawlor*, 208 U. S. 274, this Court, in its efforts to determine the true meaning and application of the Sherman Act has repeatedly held that the words of the act, "Every contract, combination . . . or conspiracy in restraint of trade or commerce" do embrace to some extent and in some circumstances labor unions and their activities;[6] and that during that period Congress, although often asked to do so, has passed no act purporting to exclude labor unions wholly from the operation of the Act.[7] On the contrary Congress has

[5] The public interest in protecting interstate transportation from interference by strikes, recognized in the *Debs* case, 158 U. S. 564, independently of the Sherman law, has since been protected by legislation specially directed to that end. See, e. g., Erdman Act, 30 Stat. 424 (1898); Newlands Act, 38 Stat. 103 (1913); Title III, Transportation Act of 1920, 41 Stat. 456, 469; Railway Labor Act of 1926, 44 Stat. 577; Railway Labor Act of 1934, 48 Stat. 1185, 45 U. S. C. §§ 151-163. See Virginian Ry. v. Federation, 300 U. S. 515, 545, 553; United States v. Lowden, 308 U. S. 225, 236. I Sharfman, The Interstate Commerce Commission, 100-102, notes 39, 40.

[6] Loewe v. Lawlor, 208 U. S. 274; Gompers v. Buck's Stove & Range Co., 221 U. S. 418; Lawlor v. Loewe, 235 U. S. 522; Duplex Printing Press Co. v. Deering, 254 U. S. 443; Coronado Coal Co. v. United Mine Workers, 268 U. S. 295; United States v. Brims, 272 U. S. 549; Bedford Cut Stone Co. v. Journeymen Stone Cutters' Association, 274 U. S. 37; Local 167 v. United States, 291 U. S. 293.

[7] Eleven bills introduced in Congress shortly after passage of the Sherman Act providing, among other things, for the exemption of labor from provisions of the Act, failed of enactment. They are H. R. 6640, in the 52nd Congress; H. R. 10539 in the 56th Congress; H. R. 11667 in the 56th Congress; S. 649 and H. R. 14947 in the 57th Congress; S. 1728, H. R. 89, H. R. 166, and H. R.

repeatedly enacted laws restricting or purporting to curtail the application of the Act to labor organizations and their activities, thus recognizing that to some extent not defined they remain subject to it.[8]

Whether labor organizations and their activities are wholly excluded from the Sherman Act is a question of statutory construction, not constitutional power.[9] The long time failure of Congress to alter the Act after it had been judicially construed, and the enactment by Congress of legislation which implicitly recognizes the judicial construction as effective, is persuasive of legislative recognition that the judicial construction is the correct one. This is the more so where, as here, the application of the statute to labor unions has brought forth sharply conflicting views both on the Court and in Congress, and where after the matter has been fully brought to the attention of the public and the Congress, the latter has not seen fit to change the statute.

While we must regard the question whether labor unions are to some extent and in some circumstances subject to the Act as settled in the affirmative, it is equally plain that this Court has never thought the Act to apply to all labor union activities affecting interstate commerce. The prohibitions of the Sherman Act were not stated in terms of precision or of crystal clarity and the Act itself did not define them. In consequence of the vagueness of its language, perhaps not uncalculated,[10] the courts have been left to give content to the statute, and in the performance of that func-

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2636 in the 52nd Congress; H. R. 7938 in the 55th Congress and H. R. 11988 in the 57th Congress. The sole purpose of another bill, S. 1546, 55th Congress, was to amend the act so as to exempt all labor organizations from its prohibitions. Copies of these bills are printed in Bills and Debates Relating to Trusts, Sen. Doc. 147, 57th Cong., 2d Sess. 1902-1903, pp. 465 and 411, 469 and 449, 473 and 431, 477 and 417, 481, 581, 949, 953, 987 and 999.

[8] See e. g. § 6 of the Clayton Act, 38 Stat. 731, (1914); restrictions on appropriations, 38 Stat. 53 (1913); 44 Stat. 1194 (1927).

For detailed account of the Congressional history see Frankfurter and Greene, The Labor Injunction (1930), pp. 139-144.

[9] Cf. comment on the labor anti-trust cases in A. L. A. Schechter Poultry Co. *v.* United States, 295 U. S. 495, 548: " . . . these decisions related to the *applicability of the federal statute and not to its constitutional validity*, . . . " and in National Labor Relations Board *v.* Jones & Laughlin S. Co., 301 U. S. 1, 40, in discussing the First Coronado Case, it was said "that it had not been shown that the activities there involved—a local strike—brought them within the provisions of the Anti-Trust Act, ..." (Italics supplied.)

[10] See Debates, 21 Cong. Rec. 2460, 3148; 2 Hoar, Autobiography of Seventy Years 364; Senator Edmunds, *The Interstate Trust and Commerce Act of 1890*, 194 No. Am. Rev. 801, 813, "after most careful and earnest considera-

tion it is appropriate that courts should interpret its words in the light of its legislative history and of the particular evils at which the legislation was aimed. Cf. *United States* v. *Standard Oil Co.*, 221 U. S. 1; *Nash* v. *United States*, 229 U. S. 373; *Appalachian Coals, Inc.* v. *United States*, 288 U. S. 344, 359, 360.

The critical words which circumscribe the judicial performance of this function so far as the present case is concerned are "Every . . . combination . . . or conspiracy in restraint of trade or commerce." Since in the present case, as we have seen, the natural and predictable consequence of the strike was the restraint of interstate transportation the precise question which we are called upon to decide is whether that restraint resulting from the strike maintained to enforce union demands by compelling a shutdown of petitioner's factory is the kind of "restraint of trade or commerce" which the Act condemns.

In considering whether union activities like the present may fairly be deemed to be embraced within this phrase, three circumstances relating to the history and application of the Act which are of striking significance must first be taken into account. The legislative history of the Sherman Act as well as the decisions of this Court interpreting it, show that it was not aimed at policing interstate transportation or movement of goods and property. The legislative history and the voluminous literature which was generated in the course of the enactment and during fifty years of litigation of the Sherman Act, give no hint that such was its purpose.[11] They do not suggest that, in general, state laws or law enforcement

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tion by the Judiciary Committee of the Senate it was agreed by every member that it was quite impractigable to include by specific description all the acts which should come within the meaning and purpose of the words "trade" and "commerce" or "trust", or the words "restraint" or "monopolize", by precise and all-inclusive definitions; and that these were truly matters for judicial consideration."

See also Senator Hoar who with Senator Edmunds probably drafted the bill (see A. H. Walker, History of the Sherman Law (1910), p. 27-28), in 36 Cong. Rec. 522, Jan. 6, 1903: "We undertook by law to clothe the courts with the power and impose on them and the Department of Justice the duty of preventing all combinations in restraint of trade. It was believed that the phrase "in restraint of trade" had a technical and well-understood meaning in the law".

[11] See the Bibliography on Trusts (1913) prepared by the Library of Congress. Cf. Homan, "Industrial Combination as Surveyed in Recent Literature", 44 Quart. J. Econ., 345 (1930). With few exceptions the articles, scientific and popular, reflected the popular idea that the Act was aimed at the prevention of monopolistic practices and restraints upon trade

machinery were inadequate to prevent local obstructions or interferences with interstate transportation, or presented any problem requiring the interposition of federal authority.[12] In 1890 when the Sherman Act was adopted there were only a few federal statutes imposing penalties for obstructing or misusing interstate transportation.[13] With an expanding commerce, many others have since been enacted safeguarding transportation in interstate commerce as the need was seen, including statutes declaring conspiracies to interfere or actual interference with interstate commerce by violence or threats of violence to be felonies.[14] It was another and quite a different evil at which the Sherman Act was aimed. It was enacted in the era of "trusts" and of "combinations" of businesses and of capital organized and directed to control of the market by suppression of

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injurious to purchasers and consumers of goods and services by preservation of business competition. See e. g. Seager and Gulick, Trusts and Corporation Problems (1929), 367 *et seq.*, 42 Ann. Am. Acad., Industrial Competition and Combination (July, 1912); P. L. Anderson, Combination *v.* Competition, 4 Edit. Rev. 500 (1911); Gilbert Holland Montague, Trust Regulation Today, 105 Atl. Monthly, 1 (1910); Federal Regulation of Industry, 32 Ann. Am. Acad. of Pol. Sci., No. 108 (1908) *passim*; Clark, Federal Trust Policy (1931), Ch. II, V; Homan, Trusts, 15 Ency. Soc. Sciences 111, 113, "clearly the law was inspired by the predatory competitive practices of the great trusts and its primary purpose was the maintenance of the competitive system in industry." See also, Shulman, Labor and the Anti-Trust Laws, 34 Ill. L. Rev. 769; Boudin, the Sherman Law and Labor Disputes, 39 Col. L. Rev. 1283; 40 Col. L. Rev. 14.

[12] There was no lack of existing law to protect against evils ascribed to organized labor. Legislative and judicial action of both a criminal and civil nature already restrained concerted action by labor. See e. g. the kinds of strikes which were declared illegal in Pennsylvania, including a strike accompanied by force or threat of harm to persons or property, Brightly's Purdon's Digest of 1885, pp. 426, 1172.

For collection of state statutes on labor activities, see Report of the Commissioner of Labor, *Labor Laws of the Various States* (1892); Bull. 370, *Labor Laws of the United States with Decisions Relating Thereto*, United States Bureau of Labor Statistics (1925); Witte, The Government in Labor Disputes (1932), 12-45, 61-81.

[13] Three statutes covered in 1890 the Congressional action in relation to obstructions to interstate commerce. A penalty was imposed for the refusal to transmit a telegraph message (R. S. § 5269, 17 Stat. 366 (1872)), for transporting nitroglycerine and other explosives without proper safeguards (R. S. § 5353, 14 Stat. 81 (1866)) and for combining to prevent the continuous carriage of freight, 24 Stat. 382, 49 U. S. C. § 7.

[14] See e. g. regulation of: interstate carriage of lottery tickets, 28 Stat. 963 (1895), 18 U. S. C. § 387; transportation of obscene books, 29 Stat. 512 (1897), 18 U. S. C. § 396; transportation of illegally killed game, 31 Stat. 188 (1900), 18 U. S. C. §§ 392-395; interstate shipment of intoxicating liquors, 35 Stat. 1136 (1909), 18 U. S. C. §§ 388-390; White slave traffic, 36 Stat. 825 (1910), 18 U. S. C. §§ 397-404; transportation of prize-fight films, 37 Stat. 240 (1912), 18 U. S. C. §§ 405-407; larceny of goods moving in interstate commerce, 37 Stat. 670 (1913), 18 U. S. C. § 409; violent interference with foreign commerce, 40 Stat. 221 (1917), 18 U. S. C. § 381; transportation of stolen motor

competition in the marketing of goods and services, the monopolistic tendency of which had become a matter of public concern. The end sought was the prevention of restraints to free competition in business and commercial transactions which tended to restrict production, raise prices or otherwise control the market to the detriment of purchasers or consumers of goods and services, all of which had come to be regarded as a special form of public injury.[15]

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vehicles, 41 Stat. 324 (1919), 18 U. S. C. § 408; transportation of kidnapped persons, 47 Stat. 326 (1932), 18 U. S. C. § 408a-408c; threatening communication in interstate commerce, 48 Stat. 781 (1934), 18 U. S. C. § 408d; transportation of stolen or feloniously taken goods, securities or money, 48 Stat. 794 (1934), 18 U. S. C. § 415; transporting strikebreakers, 49 Stat. 1899 (1936), 18 U. S. C. § [illegible]; destruction or dumping of farm products received in interstate commerce, 44 Stat. 1355 (1927), 7 U. S. C. § 491. Cf. National Labor Relations Act, 49 Stat. 449 (1935), 29 U. S. C., Ch. 7, § 151, "Finding and Declaration of Policy. The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining leads to strikes and other forms of industrial strife and unrest, which have the intent or necessary effect of burdening or obstructing commerce. . . ."

The Anti-Racketeering Act, 48 Stat. 979, 18 U. S. C. § 420a-e (1934), is designed to protect trade and commerce against interference by violence and threats. "§ 420a provides that "any person who, in connection with or in relation to any act in any way or in any degree affecting trade or commerce or any article or commodity moving or about to move in trade or commerce . . .

(a) Obtains or attempts to obtain, by the use of or attempt to use or threat to use force, violence, or coercion, the payment of money or other valuable considerations . . . not including, however, the payment of wages by a bona fide employer to a bona fide employee; or

(b) obtains the property of another with his consent, induced by wrongful use of force or fear, or under color of official right, or

(c) commits or threatens to commit an act of physical violence or physical injury to a person or property in furtherance of a plan or purpose to violate subsection (a) or (b);

(d) Conspires or acts concertedly with any other person or persons to commit any of the foregoing acts, shall upon conviction thereof, be guilty of a felony and shall be punished by imprisonment from one to ten years or by fine of $10,000 or both.

But the application of the provisions of § 420a to labor unions is restricted by § 420d, which provides: "Jurisdiction of offenses. Any person charged with violating section 420a of this title may be prosecuted in any district in which any part of the associates participating with him in the offense or by his fellow conspirators; provided, that no court of the United States shall construe or apply any of the provisions of section 420a to 420e of this title in such manner as to impair, diminish, or in any manner affect the rights of bona fide labor organizations in lawfully carrying out the legitimate objects thereof, as such rights are expressed in existing statutes of the United States."

It is significant that Chapter 9 of the Criminal Code, dealing with "Offenses against Foreign and Interstate Commerce", and relating specifically to acts of interstate transportation or its obstruction, makes no mention of the Sherman Act; which is made a part of the Code which deals with social, economic and commercial results of interstate activity, notwithstanding its criminal penalty.

[15] The history of the Sherman Act as contained in the legislative proceedings is emphatic in its support for the conclusion that "business competition" was

For that reason the phrase "restraint of trade" which, as will presently appear, had a well-understood meaning at common law, was made the means of defining the activities prohibited. The addi-

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the problem considered and that the act was designed to prevent restraints of trade which had a significant effect on such competition.

On July 10, 1888, the Senate adopted without discussion a resolution offered by Senator Sherman which directed the Committee on Finance to inquire into and report in connection with revenue bills,

"such measures as it may deem expedient to set aside, control, restrain or prohibit all arrangements, contracts, agreements, trusts, or combinations between persons or corporations, made with a view, or which tend to prevent *free and full competition* . . . with such penalties and provisions . . . as will tend to preserve freedom of trade and production, the natural competition of increasing production, the lowering of prices by such competition . . ." (19 Cong. Rec. 6041.)

This resolution explicitly presented the economic theory of the proponents of such legislation. The various bills introduced between 1888 and 1890 follow the theory of this resolution. Many bills sought to make void all arrangements "made with a view, or which tend, to prevent full and free competition in the production, manufacture, or sale of articles of domestic growth or production", S. 3445; S. 3510; H. R. 11339, all of the 50th Cong., 1st Sess., (1888) were bills of this type. In the 51st Cong. (1889) the bills were in a similar vein. See S. 1, sec. 1 (this bill as redrafted by the Judiciary Committee ultimately became the Sherman Law); H. R. 202, sec. 3; H. R. 270; H. R. 286; H. R. 402; H. R. 509; H. R. 826; H. R. 3819. See Bills and Debates in Congress relating to Trusts (1909), Vol. 1, pp. 1025-1031.

Only one, which was never enacted, S. 1268 in the 52d Cong., 1st Sess. (1892), introduced by Senator Peffer, sought to prohibit "every wilful act . . . which shall have the effect to in anyway interfere with the freedom of transit of articles in interstate commerce, ..."

When the antitrust bill (S. 1, 51st Cong., 1st Sess.), came before Congress for debate, the debates point to a similar purpose. Senator Sherman asserted the bill prevented only "business combinations" "made with a view to prevent competition", 21 Cong. Rec. 2457, 2562; see also *ibid* at 2459, 2461.

Senator Allison spoke of combinations which "control prices," *ibid* 2471; Senator Pugh of combinations "to limit production" for "the purpose of destroying competition", *ibid* 2558; Senator Morgan of combinations "that affect the price of commodities", *ibid*. 2609; Senator Platt, a critic of the bill, said this bill proceeds on the assumption that "competition is beneficent to the country", *ibid* 2729; Senator George denounced trusts which crush out competition "and that is the great evil at which all this legislation ought to be directed", *ibid* 3147.

In the House, Representative Culberson, who was in charge of the bill, interpreted the bill to prohibit various arrangements which tend to drive out competition, *ibid* 4089; Representative Wilson spoke in favor of the bill against combinations among "competing producers to control the supply of their product, in order that they may dictate the terms on which they shall sell in the market, and may secure release from the stress of competition among themselves", *ibid* 4090.

The unanimity with which foes and supporters of the bill spoke of its aims as the protection of free competition, permit use of the debates in interpreting the purpose of the act. See White, in Standard Oil Co. *v.* United States, 221 U. S. 1, 50; United States *v.* San Francisco, No. 587 this Term.

See also Report of Committee on Interstate Commerce on Control of Corporations Engaged in Interstate Commerce, S. Rept. 1326, 62d Cong., 3d Sess. (1913), pp. 2, 4; Report of Federal Trade Commission, S. Doc. 226, 70th Cong., 2d Sess. (1929), pp. 343-345.

tion of the words "or commerce among the several states" was not an additional kind of restraint to be prohibited by the Sherman Act but was the means used to relate the prohibited restraint of trade to interstate commerce for constitutional purposes, *Atlantic Cleaners & Dyers* v. *United States*, 286 U. S. 427, 434, so that Congress, through its commerce power, might suppress and penalize restraints on the competitive system which involved or affected interstate commerce. Because many forms of restraint upon commercial competition extended across state lines so as to make regulation by state action difficult or impossible, Congress enacted the Sherman Act, 21 Cong. Rec. 2456. It was in this sense of preventing restraints on commercial competition that Congress exercised "all the power it possessed." *Atlantic Cleaners & Dyers* v. *United States*, *supra*, 435.

A second significant circumstance is that this Court has never applied the Sherman Act in any case, whether or not involving labor organizations or activities unless the Court was of opinion that there was some form of restraint upon commercial competition in the marketing of goods or services[16] and finally this Court has refused to apply the Sherman Act in cases like the present in which local strikes conducted by illegal means in a production industry prevented interstate shipment of substantial amounts of the product but in which it was not shown that the restrictions on shipments had operated to restrain commercial competition in some substantial

[16] While it is impossible to consider all the anti-trust cases in this Court with reference to the question whether the acts condemned or condoned had a substantial effect on competition in the industry, nevertheless in most of them, particularly in the cases arising since the development of the "rule of reason" in 1912, emphasis was placed on the "competitive conditions in the industry".

In Addyston Pipe & Steel Co. v. United States, 175 U. S. 211, arising before the "rule of reason", Justice Peckham adopted Judge Taft's statement of the case in his opinion in the Circuit Court of Appeals, pointing out that within substantial parts of the United States, price competition had been practically eliminated (see page 236). Standard Oil Co. v. United States, 221 U. S. 1, which heralded the "rule of reason" stressed intent to eliminate competition and the predatory practices by which competition had actually been eliminated. United States v. American Tobacco Co., 221 U. S. 106, decided the same day, involved a trust which dominated the whole industry and exercised its power in securing price control. In both the Oil case and the Tobacco case, decisions were specifically rested on the ground that the condemned combinations "unduly restricted competition."

A combination of two great railroads resulting in "destroying or greatly abridging the free operation of competition theretofore existing" was enjoined in United States v. Union Pacific Co., 226 U. S. 61. But where the majority of the Court was of opinion that the evidence did not show that the combination "ever possessed or exerted sufficient power when acting alone to control prices of the products of the industry", the Sherman Act was held not to apply to the combination, United States v. United States Steel Corporation, 251 U. S.

way. *First Coronado* case, *supra*; *Leather Workers* case, *supra*. *Levering & G. Co. v. Morrin*, 289 U. S. 103.

The common law doctrines relating to contracts and combinations in restraint of trade were well understood long before the enactment of the Sherman law.[17] They were contracts for the restriction or suppression of competition in the market, agreements to fix prices, divide marketing territories, apportion customers, restrict production and the like practices, which tend to raise prices or otherwise take from buyers or consumers the advantages which accrue to them from free competition in the market. Such contracts were deemed illegal and were unenforcible at common law. But the resulting restraints of trade were not penalized and gave rise to no actionable wrong. Certain classes of restraints were not outlawed when deemed reasonable, usually because they served to preserve or protect legitimate interests, previously existing, of one or more parties to the contract.[18]

In seeking more effective protection of the public from the growing evils of restraints on the competitive system effected by the concentrated commercial power of "trusts" and "combinations" at the close of the nineteenth century, the legislators found ready at their hand the common law concept of illegal restraints of trade or commerce. In enacting the Sherman law they took over that concept by condemning such restraints wherever they occur in or affect

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417. On finding such a power to control the output, supply of the market and the transportation facilities of potential competitors, in the anthracite coal market, the arrangement was held void in United States *v.* Reading Co., 253 U. S. 26, 47-48.

The belief that "competitive conditions in the trade in harvesting machines have been established", compelled the court to find compliance with an earlier consent decree in United States *v.* International Harvester Co., 274 U. S. 693, 704.

"It has been repeatedly held by this Court that the purpose of the statute is to maintain free competition in interstate commerce . . . ", American Column & Lumber Co. *v.* United States, 257 U. S. 377, 400; United States *v.* Union Pacific R. R. Co., 226 U. S. 61, 87; United States *v.* Reading Co., 226 U. S. 324, 369; Eastern States Lumber Dealers Assn. *v.* United States, 234 U. S. 600, 609; United States *v.* Trenton Potteries, 273 U. S. 392, 397; Appalachian Coals, Inc. v. United States, 288 U. S. 344, 360.

For a complete collection of cases, see Handler, Industrial Mergers and the Anti-Trust Laws, 32 Columbia Law Rev. 179; Handler, The Sugar Institute Case, 36 Columbia Law Rev. 1; The Rule of Reason in Loose-Knit Combinations, 32 Columbia Law Rev. 291.

17 In his explanation of the bill Senator Sherman referred to several common law cases on restraint of trade. 21 Cong. Rec. 2457-2460.

18 United States *v.* Addyston Pipe & Steel Co., 85 Fed. 271. See cases collected in Handler, Cases on Trade Regulations (1937), cc. III, IV; Handler, Restraint of Trade, 13 Ency. Soc. Sciences, 339.

commerce between the states. They extended the condemnation of the statute to restraints effected by any combination in the form of trust or otherwise, or conspiracy, as well as by contract or agreement, having those effects on the competitive system and on purchasers and consumers of goods or services which were characteristic of restraints deemed illegal at common law, and they gave both private and public remedies for the injuries flowing from such restraints.

That such is the scope and effect of the Sherman Act was first judicially recognized and expounded in the classic opinion in *United States* v. *Addyston Pipe & Steel Co.*, 85 Fed. 271, affirmed 175 U. S. 211, written by Judge, later Chief Justice Taft, and concurred in by Justice Harlan and Judge, later Justice Lurton, of this Court. This Court has since repeatedly recognized that the restraints at which the Sherman law is aimed, and which are described by its terms are only those which are comparable to restraints deemed illegal at common law, although accomplished by means other than contract and which, for constitutional reasons, are confined to transactions in or which affect interstate commerce.[19]

In *Standard Oil Co.* v. *United States*, 221 U. S. 1, 54, 55, 58, decided in 1911, this Court, speaking through Chief Justice White, pointed out that the restraint of trade contemplated by § 1 of the Act took its origin from the common law, and that the Sherman Act was adapted to the prevention, in modern conditions, of conduct or dealing effecting the wrong, at which the common law doctrine was aimed. This, it was said, is "the dread of enhancement of prices and of other wrongs which it was thought would flow from the undue limitation on competitive conditions caused by contracts or other acts of individuals or corporations. . . ."[20] The Court declared

[19] See cases discussed in note 15, *supra*. See also, United States v. Freight Association, 166 U. S. 290; United States v. Joint Traffic Assn., 171 U. S. 505; Montague v. Lowry, 193 U. S. 38; Northern Securities Co. v. United States, 193 U. S. 197, 361; Nash v. United States, 229 U. S. 373, 376; Chicago Board of Trade v. United States, 246 U. S. 231, 238; Maple Flooring Assn. v. United States, 268 U. S. 563, 583, 584.

[20] "Without going into detail and but very briefly surveying the whole field, it may be with accuracy said that the dread of enhancement of prices and of other wrongs which it was thought would flow from the undue limitation on competitive conditions caused by contracts or other acts of individuals or corporations, led, as a matter of public policy, to the prohibition or treating as illegal all contracts or acts which were unreasonably restrictive of competitive conditions, either from the nature or character of the contract or act or where the surrounding circumstances were such as to justify the conclusion that they had not been entered into or performed with the legitimate purpose of reason

page 59, that "the statute was drawn in the light of the existing practical conception of the law of restraint of trade", and drew the conclusion that the restraints which were condemned by the statute are those which, following the common law analogy are "unreasonable or undue". This view was followed and more explicitly stated in *United States* v. *American Tobacco Co.*, 221 U. S. 106, 179, where it was said: " . . . as the words 'restraint of trade' at common law and in the law of this country at the time of the adoption of the anti-trust Act only embraced acts or contracts or agreements or combinations which operated to the prejudice of the public interests by unduly restricting competition or unduly obstructing the due course of trade or which, either because of their inherent nature or effect or because of the evident purpose of the acts, etc., injuriously restrained trade, that the words as used in the statute were designed to have and did have but a like significance." In thus grounding the "rule of reason" upon the analogy of the common law doctrines applicable to illegal restraints of trade the Court gave a content and meaning to the statute in harmony with its history and plainly indicated by its legislative purpose. Labor cases apart, which will presently be discussed, this Court has not departed from the conception of the Sherman Act as affording a remedy, public and private, for the public wrongs which flow from restraints of trade in the common law sense of restriction or suppression of commercial competition. In the cases considered by this Court since the *Standard Oil* case in 1911 some form of restraint of commercial competition has been the *sine qua non* to the condemnation of contracts, combinations or conspiracies under the Sherman Act, and in general restraints upon competition have been condemned only when their purpose or effect was to raise or fix the market price.[21] It is in this sense that it is said that the restraint, actual or intended, prohibited by the Sherman Act are only those which are so substantial as to affect market prices. Restraints on competition or on the course of trade in the merchandising of articles moving in inter-

ably forwarding personal interest and developing trade, but on the contrary were of such a character as to give rise to the inference or presumption that they had been entered into or done with the intent to do wrong to the general public and to limit the right of individuals, thus restraining the free flow of commerce and tending to bring about the evils, such as enhancement of prices, which were considered to be against public policy." Standard Oil Co. v. United States, 221 U. S. 1, at 58.

[21] See e. g. Ethyl Gasolene Corporation v. United States, 309 U. S. —, No. 536 this Term; United States v. Socony-Vacuum Oil Co., Inc., 309 U. S. —, Nos. 346-347 this Term, especially note 59 and cases cited.

state commerce is not enough, unless the restraint is shown to have or is intended to have an effect upon prices in the market or otherwise to deprive purchasers or consumers of the advantages which they derive from free competition. *Chicago Board of Trade* v. *United States*, 246 U. S. 231, 238; *United States* v. *United States Steel Co.*, 251 U. S. 417; *Cement Mfr's. Ass'n* v. *United States*, 268 U. S. 588; *United States* v. *International Harvester Co.*, 274 U. S. 693; *Appalachian Coals, Inc.* v. *United States*, 288 U. S. 344, 375, *et seq.*[22]

The question remains whether the effect of the combination or conspiracy among respondents was a restraint of trade within the meaning of the Sherman Act. This is not a case of a labor organization being used by combinations of those engaged in an industry as the means or instrument for suppressing competition or fixing prices. See *United States* v. *Brims*, 272 U. S. 549; *Local 167* v. *United States*, 291 U. S. 293. Here it is plain that the combination or conspiracy did not have as its purpose restraint upon competition in the market for petitioner's product. Its object was to compel petitioner to accede to the union demands and an effect of it, in consequence of the strikers' tortious acts, was the prevention of the removal of petitioner's product for interstate shipment. So far as appears the delay of these shipments was not intended to have and had no effect on prices of hosiery in the market, and so was in that respect no more a restraint forbidden by the Sherman Act than the restriction upon competition and the course of trade held lawful in *Appalachian Coals, Inc.* v. *United States*, *supra*, because notwithstanding its effect upon the marketing of the coal it nevertheless was not intended to and did not affect market price.

A combination of employees necessarily restrains competition among themselves in the sale of their services to the employer; yet such a combination was not considered an illegal restraint of trade at common law when the Sherman Act was adopted, either because it was not thought to be unreasonable or because it was not deemed a "restraint of trade."[23] Since the enactment of the declaration in § 6

[22] "... only such contracts and combinations are within the act as, by reason of intent or the inherent nature of the contemplated acts, prejudice the public interests by unduly restricting competition or unduly obstructing the course of trade." Appalachian Coals, Inc. v. United States, 288 U. S. 344, 360.

[23] Combinations of capital and labor have seldom been treated as phases of a general movement to suppress competition. See Taft, Anti-Trust Act and the

of the Clayton Act that "the labor of a human being is not a commodity or article of commerce . . . nor shall such [labor] organizations or the members thereof be held or construed to be illegal combinations or conspiracies in the restraint of trade under the Anti-Trust laws", it would seem plain that restraints on the sale of the employee's services to the employer, however much they curtail the competition among employees, are not in themselves combinations or conspiracies in restraint of trade or commerce under the Sherman Act.

Strikes or agreements not to work, entered into by laborers to compel employers to yield to their demands, may restrict to some extent the power of employers who are parties to the dispute to compete in the market with those not subject to such demands. But under the doctrine applied to non-labor cases, the mere fact of such restrictions on competition does not in itself bring the parties to the agreement within the condemnation of the Sherman Act. *Appalachian Coals, Inc.* v. *United States*, *supra*, 360. Furthermore, successful union activity, as for example consummation of a wage agreement with employers, may have some influence on price competition by eliminating that part of such competition which is based on differences in labor standards. Since, in order to render a labor combination effective it must eliminate the competition from non-union made goods, see *American Steel Foundries* v. *Tri-City Central Trades*

Supreme Court (1914), p. 21; Seager, The Attitude of the State Towards Trade Unions and Trusts, 22 Pol. Sci. Q. 385 (1907); Commons and Andrews, Principles of Labor Legislation (1927), pp. 125-129.

In England prior to 1824 the two types of combinations were treated as substantially the same, the Combinations Acts (39 Geo. III, c. 81; 39 & 40 Geo. III, c. 106), preventing combinations of wage earners even for the more obvious purpose of securing higher wages or shorter hours. These restrictions have been removed by various Acts (e. g. 5 Geo. IV, c. 95, s. 2; 22 Vict., c. 34; 34 & 35 Vict., c. 31, s. c.; 38 & 39 Vict. 36) until the Trade Disputes Act of 1906 (6 Edw. VII, c. 47) which clearly encourages the combinations of workmen. See Henderson, Trade Unions and the Law (1927). Compare the English treatment of capital combinations, see, The Anti-Trust Laws of the British Commonwealth of Nations, 32 Col. L. Rev. 324.

The experience in the United States has paralleled that in England. In a few early cases all labor combinations were regarded as unlawful, Groat, Attitude of American Courts in Labor Cases, 42 Col. Univ. Studies (1911), pp. 36-38, but since Commonwealth v. Hunt, 4 Metcalf 111 (Mass. 1842), the legitimate scope of labor combinations has steadily expanded, see Frankfurter and Greene, The Labor Injunction (1930), c. I; Landis, Cases on Labor Law (1934), pp. 32-34. In addition to this difference in treatment reflected in judicial decisions, many states have by legislation accorded favorable treatment to unions on other matters. See collection of legislation favorable to unionism found in United Mine Workers v. Coronado Coal Co., 259 U. S. 344, 386, note 1; Bull. No. 370, Labor Laws of the United States, Bureau of Labor Statistics, United States Department of Labor (1925); Witte, The Government and Labor Disputes (1932), 17 *et seq.*

Council, 257 U. S. 184, 209, an elimination of price competition based on differences in labor standards is the objective of any national labor organization. But this effect on competition has not been considered to be the kind of curtailment of price competition prohibited by the Sherman Act. See *Levering & G. Co.* v. *Morrin*, *supra*; cf. *American Foundries* case, *supra*, 209; *Window Glass Manufacturers* v. *United States*, 263 U. S. 403.[24] And in any case, the restraint here is, as we have seen, of a different kind and has not been shown to have any actual or intended effect on price or price competition.

This Court first applied the Sherman Act to a labor organization in *Loewe* v. *Lawlor*, 208 U. S. 274, in 1908, holding that the trial court had erroneously sustained a demurrer to the declaration in a suit for damages for violation of the Sherman Act on the ground that the combination alleged was not within the Act. The combination or conspiracy charged was that of a nation-wide labor organization to force all manufacturers of fur hats in the United States to organize their workers by maintaining a boycott against the purchase of the product of non-union manufacturers shipped in interstate commerce. The restraint alleged was not a strike or refusal

[24] Federal legislation aimed at protecting and favoring labor organizations and eliminating the competition of employers and employees based on labor conditions regarded as substandard, through the establishment of industry-wide standards both by collective bargaining and by legislation setting up minimum wage and hour standards, supports the conclusion that Congress does not regard the effects upon competition from such combinations and standards as against public policy or condemned by the Sherman Act.

The Norris-LaGuardia Act, 47 Stat. 70, 29 U. S. C. §§ 101-115, limiting the use of injunctions in labor disputes, is predicated on the policy that "under prevailing economic conditions", it is necessary that the worker "have full freedom of association . . . . to negotiate the terms and conditions of his employment." The Railway Labor Act of 1934, 48 Stat. 1185, 45 U. S. C. §§ 151-164, provided for independence of railroad employees in the matter of self-organization. The National Labor Relations Act, 49 Stat. 449, 29 U. S. C. §§ 151-166, was passed to protect the workers in the "exercise of full freedom of association, self-organization, and designation of representatives of their own choosing for the purpose of negotiating the terms and conditions of their employment . . . ." and expressly protects the right of self-organization, recognizes the strike as a proper union weapon and permits closed shop contracts.

The Public Contracts Act, 49 Stat. 2036, 41 U. S. C. §§ 35-48, was aimed at preventing price competition in government bidding based on wage cutting and authorizes the establishment of minimum wage standards. The Fair Labor Standards Act of 1938, 52 Stat. 1060, 29 U. S. C. §§ 201-219, likewise seeks to eliminate competition which thrived upon low wages and substandard working conditions.

This series of acts clearly recognizes that combinations of workers eliminating competition among themselves and restricting competition among their employers based on wage cutting are not contrary to the public policy.

to work in the complainants' plant, but a secondary boycott by which, through threats to the manufacturer's wholesale customers and their customers, the Union sought to compel or induce them not to deal in the product of the complainants, and to purchase the competing products of other unionized manufacturers. This Court pointed out that the restraint was precisely like that in *Eastern States Retail Lumber Dealers Co.* v. *United States*, 234 U. S. 600, 610, 614, in which a conspiracy to circulate a "black list", intended to persuade retailers not to deal with specified wholesalers, was held to violate the Act because of its restraint upon competition with unlisted wholesalers. The Court in the *Loewe* case held that the boycott operated as a restraint of trade or commerce within the meaning of the Sherman Act, and that the language of the Act, "every combination, etc." was broad enough to include a labor union imposing such a restraint. Like problems found a like solution in *Duplex Printing Press Co.* v. *Deering*, 254 U. S. 443, and in *Bedford Cut Stone Company* v. *Journeymen Stone Cutters Assn.*, 274 U. S. 37; where in the one case, a secondary boycott, and in the other, the refusal of the union to work on a product in the hands of the purchaser was carried on on a country-wide scale by a national labor organization, in order to induce the purchasers of a manufactured product shipped in interstate commerce to withdraw their patronage from the producer. In both, as in the *Loewe* case, the effort of the union was to compel unionization of an employer's factory, not by a strike in his factory but by restraining, by the boycott or refusal to work on the manufactured product, purchases of his product in interstate commerce in competition with the like product of union shops.

In the *Bedford Stone* case it was pointed out that, as in the *Duplex Printing Press Co.* case, the strike was directed against the use of the manufactured product by consumers "with the immediate purpose and effect of restraining future sales and shipments in interstate commerce" and "with the plain design of suppressing or narrowing the interstate market", and that in this respect the case differed from those in which a factory strike, directed at the prevention of production with consequent cessation of interstate shipments, had been held not to be a violation of the Sherman law. See *First Coronado* case, *supra*; *Leather Workers* case, *supra*; cf. *The Second Coronado* case, *supra*, 310.

It will be observed that in each of these cases where the Act was held applicable to labor unions, the activities affecting interstate commerce were directed at control of the market and were so widespread as substantially to affect it. There was thus a suppression of competition in the market by methods which were deemed analogous to those found to be violations in the non-labor cases. See *Montague* v. *Lowry*, 193 U. S. 38, 45, 46, *supra; Retail Lumber Dealers Co.* v. *United States, supra; Paramount Famous Lasky Co.* v. *United States*, 282 U. S. 30; *United States* v. *First National Pictures, Inc.*, 282 U. S. 44. That the objective of the restraint in the boycott cases was the strengthening of the bargaining position of the union and not the elimination of business competition—which was the end in the non-labor cases—was thought to be immaterial because the Court viewed the restraint itself, in contrast to the interference with shipments caused by a local factory strike, to be of a kind regarded as offensive at common law because of its effect in curtailing a free market and it was held to offend against the Sherman Act because it effected and was aimed at suppression of competition with non-union made goods in the interstate market.

Both the *Duplex Printing Co.* and *Bedford Stone* cases followed the enactment of the Clayton Act and the recognition of the "rule of reason" in the *Standard Oil* case *supra*. The applicability of that rule to restraints upon commerce affected by a labor union in order to promote and consolidate the interests of its union was not considered.[25] But an important point considered and decided by the Court in both cases was that nothing in the Clayton Act precluded the relief granted. We are not now concerned with the merits of either point.[26] The only significance of the two cases

[25] Whether the interest of the labor unions in these cases in maintaining and extending their respective organizations, rendered the restraint reasonable as a means of attaining that end within the common law rule, or brought the restraints within the rule of reason developed and announced in the Standard Oil case, was not discussed and we need not consider it here. Restraints upon the competitive marketing of a manufacturer's product brought about by an agreement between the employer and his employees in order to secure continuous employment of the employees was held to be within the rule of reason and therefore not an unreasonable restraint of trade in Window Glass Manufacturers v. United States, 263 U. S. 403.

[26] Section 6 of the Clayton Act declared that "nothing contained in the anti-trust laws shall be construed . . . to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the anti-trust laws". And § 20 of the Clayton Act provided, "No restraining order or injunction shall be granted by any court of the United States, or a

for present purposes is that in each the Court considered it necessary, in order to support its decision, to find that the restraint operated to suppress competition in the market.

This Court was first called on to consider a case like the present in the *First Coronado* case, *supra*. There a local branch of a national labor union sought to unionize a coal mine which was shipping its product interstate to the extent of more than 5,000 tons a week. Members of the union compelled the mine to shut down, by force and violence, including murder and arson. By reason of their forcible action all work at the mine was prevented, it filled with water, shipments of coal which were regularly moving in interstate commerce as mined, ceased, and the strikers burned more than ten cars, three of them loaded with coal and some billed for movement interstate. This Court, notwithstanding the admittedly substantial effect of the strike on the interstate movement of the coal, and the admittedly illegal and outrageous acts of the strikers, held that it was not a restraint of trade or commerce prohibited by the Sherman Act. It rested its decision specifically on two grounds: that "obstruction to coal mining is not a direct obstruction to interstate commerce in coal",[27] and that the intent to obstruct the mining of coal and to burn the loaded cars, did not necessarily imply an intent to restrain the commerce,

judge or the judges thereof, in any case between an employer and employees, or between employers and employees . . . involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right. . . .

"And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; . . . or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; . . . nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States."

In both the Duplex Printing Press Co. and the Bedford Stone Cutters cases, it was held that the prohibition of § 6 of the Clayton Act did not extend to illegal combinations or conspiracies in restraint of trade, which the concerted action taken by the labor unions in these cases was held to be, and that the restrictions of § 20 of the Clayton Act upon the injunction applied only to actual disputes between an employer and his employees, with respect to the terms or conditions of their own employment, and did not extend to acts of labor unions, boycotting the product of an employer by whom they were not employed. Cf. New Negro Alliance *v.* Sanitary Grocery Co., 303 U. S. 552.

[27] The assertion that the decision in the *First Coronado* case rests on the ground that "production, as such—in that case, coal mining—was not interstate commerce" is neither supported by the opinion in that case nor by its subsequent interpretation by this Court. See A. L. A. Schechter Poultry Co. *v.* United States, 295 U. S. 495, 548; National Labor Relations Board *v.* Jones &

although concededly interstate shipments and the filling of interstate orders for coal were necessarily ended by the stoppage of mining operations and the destruction of the loaded cars. It perhaps suffices for present purposes to say that if the strike in the *Coronado* case was not within the Sherman Act because its effect upon the commerce was "indirect" and because the "intention" to shut down the mine and destroy the cars of coal destined for an interstate shipment, did not imply an "intention to obstruct interstate commerce", then the like tests require the like decision here.

But we are not relegated to so mechanical an application of these cryptic phrases in the application of the Sherman Anti-Trust Act, for the Court has since so interpreted them as to give to the phrase "restraint of trade or commerce" a meaning and content consonant with the legislative and judicial history of the Act to which we have referred. In the *Leather Workers* case, *supra*, the Court was again called on to determine whether a local strike in a factory which prevented shipment of its product in filling interstate orders of substantial volume violated the Sherman Act. As in the *First Coronado* case the Court held that the restraint was not one prohibited by the Sherman Act. It pointed out, page 469, that there has been no attempt, as in *Loewe* v. *Lawlor*, to boycott the sale of complainant's products in other states, and that if the interruption of interstate shipments resulting from a local factory strike aimed at compelling the employer to yield to union demands were deemed within the sweep of the Sherman Act, "The natural, logical and inevitable result will be that every strike in any industry or even in any single factory will be within the Sherman Act and subject to Federal jurisdiction providing any appreciable amount of its product enters into interstate commerce", page 471. After discussing the cases which had given currency to the notion that the Sherman Act, where the combination or conspiracy is not formed with the "intent to restrain trade or commerce", is to be applied only to those restraints characterized as "direct", the Court said, page 471:

"This review of the cases makes it clear that the mere reduction in the supply of an article to be shipped in interstate commerce, by

Laughlin S. Co., 301 U. S. 40. See note 9, *supra*. Cf. The Sunshine Anthracite Coal Co. v. Adkins, No. 804 this Term, decided May 20, 1940. The opinion recognized that the cessation of production of the coal prevented interstate commerce in the coal but held that it did not violate the Sherman Act because the effect on the commerce was "indirect", to which it was thought the Sherman Act did not apply.

the illegal or tortious prevention of its manufacture, is ordinarily an indirect and remote obstruction to that commerce. It is only when the intent or necessary effect upon such commerce in the article is to enable those preventing the manufacture to monopolize the supply, control its price or discriminate as between its would-be purchasers, that the unlawful interference with its manufacture can be said directly to burden interstate commerce."

And the Court added,

"The record is entirely without evidence or circumstances to show that the defendants in their conspiracy to deprive the complainants of their workers were thus directing their scheme against interstate commerce."

It was thus made apparent that in saying that "indirect obstructions" to commerce were not condemned by the Sherman Act where the conspiracy is not directed at that commerce, the Court was not seeking to apply a purely mechanical test of liability, but was using a shorthand expression to signify that the Sherman Act was directed only at those restraints whose evil consequences are derived from the suppression of competition in the interstate market, so as "to monopolize the supply, control its price or discriminate between its would-be purchasers." And in speaking of intent as a prerequisite to liability under the Act where the restraint to interstate commerce is "indirect" it meant no more than that the conspiracy or combination must be aimed or directed at the kind of restraint which the Act prohibits or that such restraint is the natural and probable consequences of the conspiracy.

This was again pointed out in the *Second Coronado* case, *supra*, 310, where upon a retrial of the case on amended pleadings it appeared that "the purpose of the destruction of the mines was to stop the production of non-union coal and prevent its shipment to markets of other states than Arkansas, where it would by competition tend to reduce the price of the commodity and affect injuriously the maintenance of wages for union labor in competing mines." The Court declared such a restraint to be a "direct violation of the Sherman Act". The like distinction was taken and explanation made in the *Bedford Stone* case, *supra*, pp. 46, 49, where the restraint consisted in the refusal of the unions to work on stone shipped interstate from an open shop quarry after its interstate journey to the purchaser had ended, and where it appeared that the purpose of the strike was to prevent the interstate sale of the stone

in competition with the product of unionized producers. Cf. *Levering & G. Co.* v. *Morrin, supra.*

These cases show that activities of labor organizations not immunized by the Clayton Act are not necessarily violations of the Sherman Act. Underlying and implicit in all of them is recognition that the Sherman Act was not enacted to police interstate transportation, or to afford a remedy for wrongs, which are actionable under state law, and result from combinations and conspiracies which fall short, both in their purpose and effect, of any form of market control of a commodity, such as to "monopolize the supply, control its price, or discriminate between its would-be purchasers". These elements of restraint of trade, found to be present in the *Second Coronado* case and alone to distinguish it from the *First Coronado* case and the *Leather Workers* case, are wholly lacking here. We do not hold that conspiracies to obstruct or prevent transportation in interstate commerce can in no circumstances be violations of the Sherman Act. Apart from the Clayton Act it makes no distinction between labor and non-labor cases. We only hold now, as we have previously held both in labor and non-labor cases, that such restraints are not within the Sherman Act unless they are intended to have, or in fact have, the effects on the market on which the Court relied to establish violation in the *Second Coronado* case. Unless the principle of these cases is now to be discarded, an impartial application of the Sherman Act to the activities of industry and labor alike would seem to require that the Act be held inapplicable to the activities of respondents which had an even less substantial effect on the competitive conditions in the industry than the combination of producers upheld in the *Appalachian Coal* case and in others on which it relied.[28]

If, without such effects on the market, we were to hold that a local factory strike, stopping production and shipment of its product interstate, violates the Sherman law, practically every strike in modern industry would be brought within the jurisdiction of the federal courts; under the Sherman Act, to remedy local law viola-

[28] It is said to be anomalous to hold employers subject to the Labor Act because their unfair practices would prevent the shipment of their goods in interstate commerce, and at the same time to hold [illegible] the activities of employees which amount to a "direct and intentional obstruction" to interstate movement of goods, not to be within the meaning of "restraint of trade or commerce", under the Sherman Act. If any other answer than a comparison of the legislative history and objectives of the two acts, and our decisions under them, were needed, it seems obvious that the Sherman Act cannot be said to subject employees to a liability which it does not impose on employers or others.

ions. The Act was plainly not intended to reach such a result, its anguage does not require it, and the course of our decisions pre-ludes it. The maintenance in our federal system of a proper dis-ribution between state and national governments of police author-ty and of remedies private and public for public wrongs is of far-eaching importance. An intention to disturb the balance is not ightly to be imputed to Congress. The Sherman Act is concerned vith the character of the prohibited restraints and with their effect n interstate commerce. It draws no distinction between the re-traints effected by violence and those achieved by peaceful but ften times quite as effective means. Restraints not within the Act, hen achieved by peaceful means, are not brought within its sweep nerely because, without other differences, they are attended by iolence.

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

SUPREME COURT OF THE UNITED STATES.

No. 638.—October Term, 1939.

Apex Hosiery Company, Petitioner, *vs.* William Leader and American Federation of Full-Fashioned Hosiery Workers, Philadelphia, Branch No. 1, Local No. 706.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

[May 27, 1940.]

Mr. Chief Justice Hughes (dissenting): The undisputed facts will bear a brief repetition, for upon an appreciation of their true import hinges the application of the Sherman Act.

As the Circuit Court of Appeals said, the evidence disclosed a "sit-down strike in its most aggravated and illegal form". When the Union demanded a closed shop agreement and, on its refusal, declared the strike, only eight of the Company's twenty-five hundred employees were members of the Union. The Company's plant was seized and held for several weeks. Its machinery and equipment were "wantonly demolished or damaged to the extent of many thousands of dollars".

There was not merely a stoppage of production, but there was also a deliberate prevention of the shipment of finished goods to customers outside the State. This was not simply the result of the occupation of the plant but was due to the repeated and explicit refusals of the Union to permit the shipment. These goods amounted to 134,000 dozens of finished hosiery, of the value of about $800,000, of which 80 per cent, as respondents well know, were ready for shipment in interstate commerce. The evidence is that the Company's representative thus besought the Union's president: "We have orders on hand from customers all over the country which we can fill with merchandise which we have on hand at the plant.

Will you permit us to go into the plant for the sole purpose of removing that finished merchandise so that we can ship it against orders?". The Union's president emphatically answered: "No, not until this strike is settled".

There was thus a direct and intentional prevention of interstate commerce in the furtherance of an illegal conspiracy. This, I take it, the opinion of the Court concedes. Whatever vistas of new uncertainties in the application of the Sherman Act the present decision may open, it seems to be definitely determined that a conspiracy of workers, or for that matter of others, to obstruct or prevent the shipment or delivery of goods in interstate commerce to fill orders of the customers of a manufacturer or dealer is not a violation of the Sherman Act. With that conclusion I cannot agree.

The argument has been pressed in this case, and in other recent cases, that the Sherman Act does not apply to labor unions. The Court finds that argument untenable, referring to our decisions to the contrary and to the failure of repeated attempts to persuade Congress to exclude labor organizations from the operation of the Act. Respondents' argument for immunity under the terms of Sections 6 and 20 of the Clayton Act[1] has also been found unavailing. Section 6 declares that "the labor of a human being is not a commodity or article of commerce" and that nothing in the anti-trust laws shall be construed to forbid the existence and operation of labor organizations instituted for the purpose of mutual help, "or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the anti-trust laws". The reference in the last clause to "*such* organizations" has manifest reference to what precedes, and the immunity conferred is only with respect to the "lawfully carrying out" of their "legitimate objects". Section 20 forbids the granting of injunctions prohibiting persons "singly or in concert" from "terminating any relation of employment", or from engaging in described activities of persuasion, etc., when these are "peaceful and lawful"; or "from peaceably assembling in a lawful manner, and for lawful purposes". The inapplicability of these provisions is apparent.

[1] 15 U. S. C. 17; 29 U. S. C. 52.

But while the Clayton Act does not give the immunity desired by respondents, and labor unions are found by the Court to be within the purview of the Sherman Act "to some extent and in some circumstances"; the Act is construed as not embracing the direct and deliberate interference with interstate commerce that is here disclosed. I think that this construction of the statute is too narrow.

Section one of the Sherman Act[2] condemns as illegal every "combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations". "Conspiracy" is a familiar term of art and means a combination of two or more persons by concerted action to accomplish an unlawful purpose, or some purpose not in itself unlawful by unlawful means. There was plainly a conspiracy here. To "restrain" is to hold back, repress, obstruct, to hinder from liberty of action. Manifestly there was restraint in this case. What then is the significance of the term "commerce" as used in the Act? Adopting the language of the Constitution, Congress evidently used the term in its constitutional sense. "Commerce" is intercourse; in its most limited meaning it embraces traffic. *Gibbons* v. *Ogden*, 9 Wheat. 1, 189. "Commerce" manifestly covers the shipment and transportation of commodities across state lines to execute contracts of sale. The term "commerce", we said in *Second Employers' Liability Cases*, 223 U. S. 1, 46, "embraces commercial intercourse in all its branches, including transportation of passengers and property by common carriers whether carried on by water or by land".

As the instant case falls directly within the language of the Sherman Act in its natural import, the question is whether that language has been, or should be, so narrowed by judicial construction as to exclude from its application the conspiracy and restraint here found. The scope of this question is not only limited by the conclusion of the Court that labor unions are not excepted from the Act but also by the Court's rejection of the bases of the decision of the court below. Thus the immediacy of the effect of respondents' action upon interstate commerce is admitted, and the argument that the interdicted shipments constituted but a small part of the "total national output in the industry" is dismissed as irrelevant. This ruling necessarily follows from the reasoning of

[2] 15 U. S. C. 1.

our decisions under the National Labor Relations Act. In *National Labor Relations Board* v. *Fainblatt*, 306 U. S. 601, 606, we said that "The exercise of Congressional power under the Sherman Act . . . has never been thought to be constitutionally restricted because in any particular case the volume of the commerce affected may be small". Here, the volume affected was very substantial although it was but a small proportion of the entire traffic in similar commodities. Again, the Court rejects the conclusion of the court below that the evidence did not sustain a finding that respondents intended to prevent the shipment of the goods. The contrary, as we have seen, was clearly shown.

Nor does the "rule of reason" aid respondents.[3] The test of reasonableness under that rule is the effect of the agreement or combination, not the motives which inspire it. Leaders of industry have been taught in striking fashion that when the Court finds that they have combined to impose a direct restraint upon interstate commerce, their benevolent purposes to promote the interest of the industry, or to rescue it from a distressful condition, will not save them even from criminal prosecution for violation of the Sherman Act. See *United States* v. *Socony-Vacuum Oil Co.*, decided May 6, 1940. If labor unions are not excepted from the Act, and they have acted outside the legitimate field contemplated by the Clayton Act, the impartial enforcement of the law would seem to require that the same doctrine be applied to them. In that view, the purpose of respondents to promote the interests of labor organization cannot be deemed to justify the direct and intentional restraint they imposed upon interstate commerce. The opinion of the Court does not appear to hold otherwise. From no point of view, as it seems to me, can the restraint be regarded as reasonable.

Why then should the Sherman Act be construed to be inapplicable? It is said that the Act was not aimed at "policing" interstate transportation. But this would seem to be a statement of result rather than a justification for reaching it. If "policing" means the protection of interstate transportation from unlawful conspiracies to restrain it, it would seem that the Sherman Act provides that protection. The fact that various statutes have been passed by Congress to prevent the transportation of articles deemed

[3] Standard Oil Co. v. United States, 221 U. S. 1; United States v. American Tobacco Co., 221 U. S. 106.

to be injurious does not indicate the contrary, for these are statutes restricting the right of transportation in order to protect the public, while the Sherman Act is aimed at securing the freedom of transportation in lawful commerce.

The question whether a conspiracy to prevent transportation in interstate commerce was within the Sherman Act came before the circuit courts not long after the Act was passed. In *United States v. Workingmen's Amalgamated Council*, 54 Fed. 994, it appeared that in consequence of a difference between the warehousemen in New Orleans and their employees and the principal draymen and their subordinates, a strike was called by labor associations which enforced "a discontinuance of labor in all kinds of business, including the business of transportation of goods and merchandise which were in transit through the City of New Orleans, from state to state, and to and from foreign countries". By the intended effect of the defendants' actions, "not a bale of goods constituting the commerce of the country could be moved". District Judge Billings, sitting in the Circuit Court, concluded that there was no question "but that the combination of the defendants was in restraint of commerce" and hence a violation of the Sherman Act. *Id.*, pp. 999, 1000. An injunction was granted and the order was affirmed by the Circuit Court of Appeals 57 Fed. 85.

A similar view was apparently entertained by Circuit Judge Taft and Circuit Judge Lurton. *See Thomas v. Cincinnati, N. O. & T. P. Ry. Co.*, 62 Fed. 803, 821. It was noted in that case that a conspiracy to prevent transportation might result in the paralysis of interstate commerce. *Id.*, p. 822.

In the case of *United States v. Debs*, 64 Fed. 724, the United States brought suit to enjoin those engaged in a conspiracy to interfere with transportation upon several railroads, and an injunction having been issued and disobeyed, contempt proceedings were instituted. The question was whether the federal court had jurisdiction to issue the injunction. Circuit Judge Woods found that it had and based his decision upon the Sherman Act. After stating that the original design of the Act to suppress trusts and monopolies created by contract or combination in the form of trust, which would be of a contractual character, was adhered to, the court thought it equally clear that "a further and more comprehensive

purpose" came to be entertained and was embodied in the final form of the enactment. The Act extended to conspiracies in the sense of the law and, citing the decisions showing the constitutional scope of the term "commerce" and its application to transportation, the court found no reason for thinking that the term as used in the Sherman Act was "less comprehensive". *Id.*, pp. 747-751.

It is true that when the *Debs* case came to this Court on a petition for *habeas corpus*, the decision sustaining the jurisdiction of the federal court to entertain the suit by the United States was placed upon the ground that the United States, having the full attributes of sovereignty within the limits of its granted powers, had among those the power over interstate commerce and over the transmission of the mails and was entitled to remove everything put upon highways, natural or artificial, to obstruct the passage of interstate commerce or the carrying of the mails. 158 U. S. 564. But while the Court chose that broad ground for sustaining jurisdiction, it was careful not to intimate disagreement with the basis of the decision in the Circuit Court as to the application of the Sherman Act. Referring to that decision, and to the Sherman Act, the Court said: "We enter into no examination of the act of July 2, 1890, c. 647, 26 Stat. 209, upon which the Circuit Court relied mainly to sustain its jurisdiction. It must not be understood from this that we dissent from the conclusions of that court in reference to the scope of the act, but simply that we prefer to rest our judgment on the broader ground which has been discussed in this opinion, believing it of importance that the principles underlying it should be fully stated and affirmed." *Id.*, p. 600.

In *Loewe* v. *Lawlor*, 208 U. S. 274, in holding that the Sherman Act applied to labor unions, the Court cited in support of its reasoning the case of *United States* v. *Workingmen's Amalgamated Council*, *supra*, quoting the statement of District Judge Billings in describing the New Orleans conspiracy: "One of the intended results of their combined action was the forced stagnation of all the commerce which flowed through New Orleans. This intent and combined action are none the less unlawful because they included in their scope the paralysis of all other business within the city as well". That "forced stagnation" was the obstruction of interstate transportation. The Court in the *Loewe* case also quoted in full the observation in the *Debs* case that the Court should not be under-

stood as dissenting from the conclusions of the circuit court as to the scope of the Sherman Act. And this Court, still considering the application of that Act to labor unions, then quoted what had been said by Mr. Justice Brewer in the *Debs* case (*supra*, p. 581) with respect to obstructions to interstate commerce, as follows: "It is curious to note the fact that in a large proportion of the cases in respect to interstate commerce brought to this court the question presented was of the validity of state legislation in its bearings upon interstate commerce, and the uniform course of decision has been to declare that it is not within the competency of a State to legislate in such a manner as to obstruct interstate commerce. If a State, with its recognized powers of sovereignty, is impotent to obstruct interstate commerce, can it be that any mere voluntary association of individuals within the limits of that State has a power which the State itself does not possess?" *Loewe* v. *Lawlor*, *supra*, pp. 303, 304.

In the light of these decisions of the circuit courts and of the significant and unanimous expressions by this Court, the argument seems to be untenable that the Sherman Act has been regarded as not extending to conspiracies to obstruct or prevent transportation in interstate or foreign commerce. On the contrary, I think that hitherto it has not been supposed that such conspiracies lay outside the Act.

With this background we come to the question whether the application of the Sherman Act in the instant case, which would otherwise appear to be required by its comprehensive terms, has been precluded by our decisions in labor cases. The view is announced that the Sherman Act was not directed at those restraints which fall short of any form of market control of a commodity, such as to monopolize the supply, control its price, or discriminate between its would-be purchasers. That is, in short, that it does not apply to the direct and intentional obstruction or prevention of the shipment or transportation of goods to fill the orders of customers in interstate commerce such as we have here. I do not read our decisions as either requiring or justifying such a judicial limitation of the provisions of the Act. Rather, I believe, they point to a contrary conclusion.

While *Loewe* v. *Lawlor*, *supra*, was the case of a boycott, the principle applied was not limited to that sort of restraint but was

as broad as the terms of the Act. The Court not only did not exclude obstruction of interstate shipments from being regarded as a violation of the statute but drew upon the decisions which had involved such obstruction to support its general conclusion. The Court considered the means employed in the *Loewe* case as constituting a direct restraint, but plainly those means were not deemed to be exclusive of other means including those which had been employed in the cases which the Court cited. The same may be said of other boycott cases. See *Duplex Printing Company* v. *Deering*, 254 U. S. 443; *Bedford Cut Stone Company* v. *Journeymen Stone Cutters Association*, 274 U. S. 37.

In *Gompers* v. *Buck Stove & Range Co.*, 221 U. S. 418, 438, the Court, referring to *Loewe* v. *Lawlor*, emphasized the comprehensiveness of the Sherman Act, saying:

"In *Loewe* v. *Lawlor*, 208 U. S. 274, the statute was held to apply to any unlawful combination resulting in restraint of interstate commerce. In that case the damages sued for were occasioned by acts which, among other things, did include the circulation of advertisements. But the principle announced by the court was general. It covered any illegal means by which interstate commerce is restrained, whether by unlawful combinations of capital, or unlawful combinations of labor; and we think also whether the restraint be occasioned by unlawful contracts, trusts, pooling arrangements, blacklists, boycotts, coercion, threats, intimidation, and whether these be made effective, in whole or in part, by acts, words or printed matter".

Moreover, of what avail is it to interdict boycotts or to assure a free market, that is, to secure freedom in obtaining customers, and yet to leave unprotected the right to ship goods to the customers who are thus obtained? Of what advantage is it to solicit orders freely in interstate commerce if they cannot be filled? The freedom of interstate movement—immunity from conspiracies directly to restrain shipment and delivery—lies at the very base of a free market and the untrammeled making of sales.

The *First Coronado Company* case (259 U. S. 344), chiefly relied upon, does not seem to afford an adequate basis for the broader ruling now made. That decision was centered upon the point that production, as such,—in that case, coal mining,—was not interstate commerce, and that obstruction to coal mining through a strike was not in itself a direct obstruction to interstate commerce. *Id.*, pp. 407, 408.

And it was deemed to be necessary to go further and find an "intent to injure, obstruct or restrain interstate commerce" in order to bring the case within the Sherman Act. The evidence was found insufficient to show such an intent. Thus, the Court did not decide that a direct and intentional obstruction of interstate commerce was not a violation of the Act. In the *Second Coronado Company* case (268 U. S. 295), evidence of that intent was supplied and the Court accordingly set aside a judgment in favor of the local union. It is true that the Court, in dealing with the purpose of the local union, found that it was to stop the production of non-union coal and prevent its shipment to markets of other States, where by competition it would tend to reduce the price of the commodity and affect injuriously the maintenance of wages for union labor in competing mines. But the interstate commerce that was thus found to be directly and intentionally obstructed was the shipment of the coal, and whether the purpose was to maintain unionization in other States, or within the same State, would not seem to be material, so long as the interstate commerce in either case is directly and intentionally prevented.

The Court in the *Second Coronado Company* case not only decided the particular case but laid down the general principle as follows: "But when the intent of those unlawfully preventing the manufacture or production is shown to be to restrain or control the supply entering and moving in interstate commerce, or the price of it in interstate markets, their action is a direct violation of the Anti-Trust Act". *Id.*, p. 310. The use of the disjunctive is significant.

The ruling of the *First Coronado Company* case as to a mere stoppage of production, in the absence of proof of a direct and intentional obstruction of interstate commerce, was repeated in the case of *United Leather Workers* v. *Herkert Company*, 265 U. S. 457. But the dictum from the opinion in that case, which the Court quotes in its present opinion, must be read in connection with what immediately follows where the Court pointed out that there was no direct interference by the defendants in the *Herkert case* "with the interstate transportation" of the goods of the plaintiff company. Any doubt as to the true import of the *Coronado* and *Herkert* cases is set at rest by this Court's construction of these decisions in the case of *Bedford Cut Stone Company* v. *Journeymen Stone*

Cutters Association, supra. There the Court emphasized the point as to the absence of direct interference with interstate transportation in the earlier cases, saying (274 U. S. pp. 47, 48):

"The case, therefore, is controlled, not by *United Mine Workers* v. *Coronado Co., supra*, [259 U. S. 344] and *United Leather Workers* v. *Herkert*, 265 U. S. 457, as respondents contend, but by others presently to be discussed. In the *United Leather Workers* case, it appeared that the strikes were leveled only against production, and that the strikers (p. 471) 'did nothing which in any way directly interfered with the interstate transportation or sales of the complainants' product'; and the decision rests upon the ground that there was an entire absence of evidence or circumstances to show that the defendants, in their conspiracy to coerce complainants, were directing their scheme against interstate commerce. *United Mine Workers* v. *Coronado Co., supra*, pp. 408-409, is to the same effect".

And the general principle set forth in the *Second Coronado Company* case, as above quoted, was reiterated.

In *Levering & Garrigues Company* v. *Morrin*, 289 U. S. 103, 107, there was no showing of a direct or intentional restraint of interstate commerce. But in *Local 167* v. *United States*, 291 U. S. 293, the evidence showed a conspiracy "to burden the free movement of live poultry into the metropolitan area" in New York. The Court said: "The interference by appellants and others with the unloading, the transportation, the sales by marketmen to retailers, the prices charged and the amount of profits exacted operates substantially and directly to restrain and burden the untrammeled shipment and movement of the poultry while unquestionably it is in interstate commerce". *Id.*, p. 297. Thus it was "the untrammeled shipment and movement" which, when found to be directly and intentionally restrained, was held to constitute violation of the Sherman Act.

Suppose, for example, there should be a conspiracy among the teamsters and truck drivers in New York City to prevent the hauling of goods and their transportation in interstate commerce, can it be doubted that the Sherman Act would apply? Would it not be essentially the same sort of obstruction of interstate commerce as was found to have been effected in *United States* v. *Workingmen's Amalgamated Council, supra*, where the transportation of goods in New Orleans in interstate commerce was tied up? There the defendants paralyzed local business and their object was to benefit

themselves in their dealings with their employers, but to attain that end they directly and intentionally obstructed the movement of goods in interstate commerce and thus came within the interdiction of the Act. The fact that the defendants in the instant case are not teamsters can make no difference as it is the direct and intentional prevention of interstate commerce that turns the scales.

Our decisions have said much of the "free flow" of interstate commerce. What is this metaphor of an interstate stream protected in its flow by the Sherman Act but a striking way of describing the movement of goods by untrammeled shipments in pursuance of freely negotiated sales?

It was to protect this free movement from being obstructed by industrial strife through the denial of collective bargaining that Congress passed the National Labor Relations Act. In sustaining the validity of that Act we referred to our decisions with respect to the conduct of employees engaged in production, summing up the matter in this way: "And in the second *Coronado* case the Court ruled that while the mere reduction in the supply of an article to be shipped in interstate commerce by the illegal or tortious prevention of its manufacture or production is ordinarily an indirect and remote obstruction to that commerce, nevertheless when the 'intent of those unlawfully preventing the manufacture or production is shown to be to restrain or control the supply entering and moving in interstate commerce, or the price of it in interstate markets, their action is a direct violation of the Sherman Act' ". *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation*, 301 U. S. 1, 40. It is true that in that case we were considering the power of Congress over interstate commerce, but we were pointing to the exercise of that power in the Sherman Act, with respect to which we had previously said "that Congress meant to deal comprehensively and effectively with the evils resulting from contracts, combinations and conspiracies in restraint of trade, and to that end to exercise all the power it possessed". *Atlantic Cleaners & Dyers* v. *United States*, 286 U. S. 427, 435. That power, and its exercise, should not be deemed to fall short of the protection of the interstate shipment of goods from conspiracies to impose a direct restraint upon it.

The attempt in the court below to distinguish between the use of the word "affect" in the National Labor Relations Act and the word "restraint" in the Sherman Act is ineffectual as it fails to

take note of the fact that the word "affect" was construed as purporting "to reach only what may be deemed to burden or obstruct" interstate or foreign commerce, and hence under the familiar principle "that acts which directly burden or obstruct interstate or foreign commerce, or its free flow, are within the reach of the congressional power", the statute was upheld. *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation, supra*, pp. 31, 32.

The evil sought to be remedied by the National Labor Relations Act was the interruption of interstate commerce primarily by the prevention of the free shipment and delivery of goods in that commerce, and hence it has been applied to those cases where industries are of such a character that the prohibited unfair labor practices would naturally have the effect of interrupting the movement of commodities between the States. See, *e.g.*, *National Labor Relations Board* v. *Fruehauf*, 301 U. S. 49, 53, 54; *National Labor Relations Board* v. *Friedman-Harry Marks Co.*, 301 U. S. 58, 72, 73; *Santa Cruz Fruit Packing Co.* v. *National Labor Relations Board*, 303 U. S. 453, 468; *Consolidated Edison Company* v. *National Labor Relations Board*, 305 U. S. 197, 221. In *National Labor Relations Board* v. *Fainblatt*, *supra*, pp. 605, 606, we found that "interstate commerce was involved in the transportation of the materials to be processed across state lines to the factory of respondents and in the transportation of the finished product to points outside the state for distribution to purchasers and ultimate consumers", and that "transportation alone across state lines is commerce within the constitutional control of the National Government"; and, having said that, we pointed to the protective exercise of congressional power under the Sherman Act as not in any way restricted because the volume of the commerce involved in such transportation was small. *Id.*

It would indeed be anomalous if, while employers are bound by the Labor Act because their unfair labor practices may lead to conduct which would prevent the shipment of their goods in interstate commerce, at the same time the direct and intentional obstruction or prevention of such shipments by the employees were not deemed to be a restraint of interstate commerce under the broad terms of the Sherman Act.

This Court has never heretofore decided that a direct and intentional obstruction or prevention of the shipment of goods in interstate commerce was not a violation of the Sherman Act. In my

opinion it should not so decide now. It finds no warrant for such a decision in the terms of the statute. I am unable to find any compulsion of judicial decision requiring the Court so to limit those terms. Restraints may be of various sorts. Some may be imposed by employers, others by employees. But when they are found to be unreasonable and directly imposed upon interstate commerce, both employers and employees are subject to the sanctions of the Act.

It is said that such a view would bring practically every strike in modern industry within the application of the statute. I do not agree. The right to quit work, the right peaceably to persuade others to quit work, the right to proceed by lawful measures within the contemplation of the Clayton Act to attain the legitimate objects of labor organization, is to my mind quite a different matter from a conspiracy directly and intentionally to prevent the shipment of goods in interstate commerce either by their illegal seizure for that purpose, or by the direct and intentional obstruction of their transportation or by blocking the highways of interstate intercourse.

Once it is decided, as this Court does decide, that the Sherman Act does not except labor unions from its purview,—once it is decided, as this Court does decide, that the conduct here shown is not within the immunity conferred by the Clayton Act,—the Court, as it seems to me, has no option but to apply the Sherman Act in accordance with its express provisions.

Mr. Justice McReynolds and Mr. Justice Roberts join in this opinion.